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release that funding without delay so that Windstream can begin to deploy robust broadband to consumers in these areas.

According to Windstream's analysis of the challenges, 3,197 of those 18,808 unopposed census blocks were shown as served by a competitor with broadband at speeds of at least 3 Mbps download and 768 upload (3/768) on the sixth version of the National Broadband Map but were included in Windstream's election because Windstream's analysis of porting activity ("porting analysis") in the relevant census blocks indicated the absence of a competitor providing broadband in those census blocks.<sup>2</sup> In such cases, the Bureau should hold that Windstream's porting analysis evidence is sufficient to show that the status of the census block should be treated differently than the status shown on the National Broadband Map.<sup>3</sup> Given the broadly held concerns about the accuracy of the National Broadband Map, Windstream's porting analysis, in the face of *no* opposing evidence, establishes that it is "more likely than not"<sup>4</sup> that those census blocks should be classified as unserved for the purposes of CAF Phase I and therefore eligible for support.

No challenger has asserted that Windstream did not correctly perform its porting analysis as described in its election documents. The fact that Windstream's porting analysis cannot capture every case where a customer could be receiving broadband from a competitor does not mean that the analysis is not a reasonable, probative, and reliable indicator of the presence or absence of a competitor in a given area. In fact, it is essentially the best evidence available to an

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<sup>2</sup> A more detailed discussion of Windstream's "porting analysis" is included herein, as well as in Windstream's August 20, 2013 filing, particularly Attachments 2 and 3 therein.

<sup>3</sup> See *Connect America Fund*, WC Docket No. 10-90, Report and Order, at ¶ 33 (May 22, 2013) (CAF Phase I Order).

<sup>4</sup> See *id.*

ILEC in this process, because the competitor, not the ILEC, holds all available direct evidence of whether the competitor offers service to at least a single location in a given census block. In addition, the probative nature of Windstream’s porting analysis is demonstrated by the facts that (1) a significant portion of the census blocks that Windstream included in its election based on the porting analysis (lack of ports) were unopposed; (2) even among those providers who opposed Windstream’s election, nearly all did not oppose a portion of the census blocks identified by the porting analysis; and (3) the porting analysis showed porting activity in a significant number of census blocks, which Windstream thus did not include in its election.

With regard to the filed challenges to Windstream’s election, Windstream urges the Bureau to examine them closely and ensure that the challenges are valid and sufficiently “supported by some form of documented evidence,” as required.<sup>5</sup> As noted above, the direct evidence of whether a competitor serves a given area is entirely within that competitor’s possession, and under the process adopted by the Commission, the competitor need not serve the entire census block to exclude the entire census block from CAF Phase I eligibility.<sup>6</sup> Thus, there is no legitimate reason why, if a competitor actually is serving a census block, it cannot provide direct evidence—for example, a single or a few billing records in that census block. Indeed, several competitors provided such direct evidence for consideration, so any possible concerns about the difficulty or burden of producing such evidence should be discarded.

Anything less than such direct evidence should be considered with great skepticism and scrutiny. Indeed, a number of challengers have offered little or no more than a signed certification applicable to a given list of census blocks. And with regard to the largest four cable

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<sup>5</sup> *Id.*

<sup>6</sup> *See id.* at fn.63.

companies, Windstream performed an analysis showing that their generalized challenges are directly contradicted by publicly available data from their own websites. The Bureau must ensure that any certifications are valid according to the guidance given by the Commission in the *CAF Phase I Order* and are sufficiently “supported by some form of documented evidence” before relying on them to exclude census blocks from CAF Phase I eligibility.<sup>7</sup> The Bureau must reject challenges that are based on assertions that census blocks are “serviceable” or “can be served,” because the Commission has made clear that a challenger must “demonstrate that [a census] block is in fact served by fixed Internet access with speeds of 3 Mbps/768 kbps or higher.”<sup>8</sup> In addition, the Bureau should not consider any evidence that the price cap carrier has not had an opportunity to review, including information that is cited but withheld and evidence that has been filed with the Commission confidentially. Finally, the Bureau should not exclude census blocks from CAF Phase I eligibility on the basis of improper “challenges” from rate-of-return ILECs that have service territories adjacent to Windstream’s service territories.

Windstream responds herein individually to the various challenges, the vast majority of which are insufficient and should be rejected. We reiterate that the Bureau and the Commission should carefully consider each challenge before excluding entire census blocks from being able to realize the benefits of CAF Phase I. The stakes could not be higher for consumers who lack access to the robust broadband that enables access to health care and educational opportunities and drives job creation and economic prosperity.

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<sup>7</sup> See *id.* at ¶ 33.

<sup>8</sup> *Id.* at ¶ 32.

## DISCUSSION

### **I. THE COMMISSION SHOULD PROMPTLY RELEASE FUNDING FOR CENSUS BLOCKS THAT WERE NOT SPECIFICALLY CHALLENGED.**

More than 70 percent of the total census blocks in Windstream's election, constituting \$73,434,300 of its elected support, have not been the subject of a specific challenge by a competitive provider. Windstream respectfully requests that the Commission direct USAC to release that funding without delay so that Windstream can begin to use it, in combination with its own private investment, to deploy robust broadband to consumers in these areas and thereby fulfill the goals of the CAF Phase I incremental support program.

The Bureau's challenge process has provided competitive providers with a reasonable opportunity to come forth with any claims that they serve elected census blocks, and dozens of providers, large and small, have done so. Indeed, Windstream provided a detailed spreadsheet accompanying its election to allow competitive providers quickly to identify relevant census blocks for the purposes of developing any challenges. Thus, with respect to those census blocks in which no competitor came forth with a specific challenge, Windstream has met its burden and no competitive provider has even attempted to provide a rebuttal. Thus, such census blocks immediately should be declared eligible for CAF Phase I incremental support.

### **II. WINDSTREAM'S PORTING ANALYSIS SHOULD OVERRIDE A CENSUS BLOCK'S NATIONAL BROADBAND MAP DESIGNATION WHERE IT IS NOT COUNTERED BY DIRECT EVIDENCE.**

As authorized by the Commission in the *CAF Phase I Order*, Windstream included in its election certain census blocks that are shown as served by a competitor on the National Broadband Map, but which Windstream argues are not in fact so served. As "documented

evidence”<sup>9</sup> in support of its election, Windstream provided a certification that it did not port a telephone number used to serve a Windstream customer who also subscribed to broadband in the census block to a provider other than Windstream during the period December 1, 2011 through May 31, 2013, and included a declaration describing in detail the methodology of its porting analysis.<sup>10</sup> The Commission has deemed that “a complete lack of number porting to a number of census blocks over a sufficiently long time period would ... bring into question whether the cable company or WISP is actually offering broadband in that area.”<sup>11</sup>

Nevertheless, certain trade associations are lodging generalized criticisms of Windstream’s porting analysis and have asserted that even in the face of *no* opposing evidence, the porting analysis should not be sufficient to classify a census block as unserved for the purposes of CAF Phase I and thus eligible for CAF Phase I incremental support.<sup>12</sup> These generalized requests should be dismissed, and Windstream’s porting analysis should be sufficient to override the National Broadband Map designation in any case where a competitive provider does not offer specific, direct evidence to counter Windstream’s evidence.

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<sup>9</sup> See *id.* at ¶ 33.

<sup>10</sup> See Declaration of Christopher B. Raper, Windstream Vice President – Consumer Analytics, attached as Attachment 2 to Letter from Eric N. Einhorn, Senior Vice President, Government Affairs and Strategy, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (August 20, 2013) (Windstream Election).

<sup>11</sup> See CAF Phase I Order at ¶ 33, fn.68 (noting that “a complete lack of number porting to a number of census blocks over a sufficiently long time period would ... bring into question whether the cable company or WISP is actually offering broadband in that area”).

<sup>12</sup> See Letter from Jennifer K. McKee, Vice President and Associate General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, at 1, 3 (Sept. 27, 2013) (NCTA Challenge); Letter from Stephen E. Coran, Counsel for the Wireless Internet Service Providers Association, to Marlene H. Dortch, Secretary, FCC, at 2 (Sept. 27, 2013) (WISPA Challenge).

A. It Is Broadly Accepted That the National Broadband Map Data Are Imperfect.

Given that the National Broadband Map was created primarily as a tool for consumers,<sup>13</sup> and relies on voluntary self-reporting by carriers who are subject to no uniform reporting methodology, it is widely accepted to be an imperfect tool for determining census-block-level broadband availability. The Commission itself has recognized that the National Broadband Map is not completely accurate,<sup>14</sup> and hence has directed the Bureau to conduct this and other challenge processes in connection with the use of the Map to distribute CAF support. Thus, meaningful evidence that the Map designation is incorrect—such as the evidence provided by Windstream’s porting analysis when no competitor provides direct evidence to counter it—should be sufficient to override the Map designation.

The Commission should not afford any weight to Time Warner Cable’s hyperbolic assertion that the Commission “would be effectively calling into question the integrity of the entire National Broadband Map and the broadband availability contained therein” if it permits Windstream’s porting analysis to override a Map designation. In fact, Time Warner Cable itself, among many other providers, on multiple occasions has noted that the Map data are flawed.<sup>15</sup> Because the Map is made up of provider-reported data, it is subject to the vagaries of providers’

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<sup>13</sup> See, e.g., <http://www.ntia.doc.gov/press-release/2009/ntia-unveils-program-help-states-map-internet-infrastructure>.

<sup>14</sup> See *Connect America Fund*, WC Docket No. 10-90, Further Notice of Proposed Rulemaking, FCC 12-136, at ¶¶ 15-16 (Nov. 19, 2012). See also Public Notice, Wireline Competition Bureau Seeks Comment on Areas Shown as Unserved on the National Broadband Map For Connect America Fund Phase I Incremental Support, DA 12-1961 (Dec. 5, 2012); *Connect America Fund*, WC Docket No. 10-90, Report and Order, DA 13-1113 (May 16, 2013) (CAF Phase II Challenge Process Order).

<sup>15</sup> See Comments of Time Warner Cable, WC Docket No. 10-90 (Jan. 9, 2013); Letter from Matthew A. Brill, Counsel for Time Warner Cable, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (July 24, 2012).

reporting practices and methodologies, and has been noted to have significant inaccuracies.<sup>16</sup> It can be underinclusive to the extent that some providers neglect to report at all or in full, and overinclusive to the extent that some providers' coverage may be exaggerated for any number of reasons, including that data may not be provided on a sufficiently granular basis, or such data may be developed from extrapolations based on the presence of infrastructure rather than on actual customer records. This challenge process itself reinforced the fact that the National Broadband Map continues to contain significant inaccuracies. With respect to Windstream alone, challengers—including all of the largest, most sophisticated cable competitors—claimed to serve 1,306 census blocks in Windstream's election that they had not designated as served on the operative version of the National Broadband Map.

As Windstream has acknowledged throughout the CAF Phase I process, its own National Broadband Map data are not sufficiently granular and up-to-date to accurately reflect Windstream's broadband availability. Windstream is currently, and on an ongoing basis, working to provide updated, more granular data for inclusion in the Map. Most likely many other providers are doing the same. But while the Map is still very much a work in progress, and where it is being relied on to inform important policy decisions, the Commission must make adjustments and perform rigorous oversight to ensure that it is identifying served and unserved census blocks as correctly as possible. To that end, meaningful evidence that the Map's designation is incorrect—such as Windstream's porting analysis when no competitor provides specific, direct evidence to the contrary—should be sufficient to override the Map's designation.

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<sup>16</sup> See, e.g., Comments of the Mississippi Public Service Commission, WC Docket No. 10-90, at 1 (filed Jan. 8, 2013) (“Upon review of the NBM of the unserved fixed broadband areas in Mississippi, it is evident that the coverage area in Mississippi is grossly misstated”).

B. Windstream Correctly Performed Its Porting Analysis, and No Challenger Has Asserted Otherwise.

Windstream's porting analysis is based on the fact that, in an area where the ILEC is not providing robust broadband and a cable provider or fixed wireless Internet service provider (WISP) is providing broadband at speeds of at least 3/768 and, it would be reasonable to expect that some of the ILEC's voice and broadband customers would switch their service to the competitor, given a meaningful amount of time. Because telephone number porting is subject to specific processes, Windstream and other carriers have accurate records of telephone numbers ported, and which carriers to whom and from whom they are ported. Thus, Windstream gathered all instances in which a local telephone number was ported from Windstream to another carrier for the 18-month period ending May 31, 2013, and associated that data with archived customer profile data, including whether that customer subscribed to broadband. These profiles were matched to census blocks using data from a third-party vendor, and the process yielded a data set showing how many ports from Windstream broadband customers occurred in a census block during the 18-month period. *Where there were zero such ports*, Windstream considered the census block eligible for its election, because the total absence of ports is good evidence of the lack of a broadband competitor delivering 3/768 or better service in the census block.<sup>17</sup>

Though some parties assert that the Commission should summarily dismiss Windstream's porting evidence,<sup>18</sup> it is significant that not one of the more than 40 challengers to Windstream's election has even claimed that Windstream incorrectly performed the analysis it set out to perform. A few of the challengers have presented analyses showing the existence of some

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<sup>17</sup> See Windstream Election.

<sup>18</sup> See, e.g., footnote 12 *supra*.

number ports from Windstream;<sup>19</sup> however, Windstream’s analysis, as described in its election filing, did not focus on all number ports, but only those number ports from Windstream broadband customers to wireline providers.<sup>20</sup> In other words, Windstream’s analysis accurately captured, as intended, those census blocks where there was no number port over an 18-month period from a Windstream voice and broadband customer, and concluded that the absence of such ports indicated the lack of a presence of a broadband competitor. Though some challengers have deemed this aspect of the porting analysis—the use of ports only from Windstream broadband customers—to be a shortcoming,<sup>21</sup> Windstream believes that this parameter more accurately captures situations where customers are switching their Windstream service to a competing broadband service, and thus indicates the presence of a broadband competitor. An analysis of simple voice ports indicates the presence of a competing *voice* provider but is less probative of whether a *broadband* competitor exists in the area.

Moreover, the validity and relevance of Windstream’s porting analysis are further reinforced by the facts that:

- **A significant portion of the census blocks that Windstream included in its election based on its porting analysis were unopposed.** Of the census blocks that were shown as served by an unsubsidized competitor on the National Broadband Map but that Windstream elected on the basis of its porting analysis, 3,197 were unopposed by a challenger, thus indicating that Windstream’s analysis

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<sup>19</sup> See, e.g., Connect America Fund Phase I (Round 2) Challenge of Cox Communications, Inc., WC Docket No. 10-90, at 7-8 (Sept. 27, 2013) (Cox Challenge); Letter from K.C. Halm, Counsel for Charter Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (Sept. 27, 2013) (Charter Challenge); Time Warner Cable, Inc.’s Challenge to Price Cap Carrier Funding Elections, WC Docket No. 10-90, at 7-8 (Sept. 27, 2013) (TWC Challenge).

<sup>20</sup> See Windstream Election at 2.

<sup>21</sup> See Charter Challenge at 2; Letter from K.C. Halm, Counsel for Access Cable Television, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (Sept. 27, 2013) (Access Challenge).

pinpointed thousands of census blocks that were incorrectly classified on the Map. This represents 24,122 locations that would be left unserved if the Map classification prevails but could receive robust broadband as a result of Windstream's election.

- **Even among those providers that challenged Windstream's election, nearly all confirmed some of Windstream's elected census blocks as unserved.** When competitors actually confronted Windstream's porting analysis, in almost all cases they showed that a significant number of the census blocks were in fact incorrectly characterized as served on the National Broadband Map. For example, Windstream included in its election 986 census blocks that were designated on the National Broadband Map by Mediacom, a large cable provider. When Mediacom challenged Windstream's election, it opposed it only with respect to 642 of those CBs.<sup>22</sup> In other words, for 344 of those census blocks, Mediacom presumably performed its own analysis and determined that they were incorrectly designated as served on the Map and that Windstream's porting analysis had in fact pinpointed census blocks without a broadband competitor. The same was true of many smaller challengers that clearly did a rigorous review of their own service areas using customer records and network maps; for example, Service Electric challenged with respect to only 2 of the 12 census blocks Windstream elected,<sup>23</sup> and Mi Connection challenged only 3 out of 13.<sup>24</sup>
- **Windstream's porting analysis showed relevant porting activity in a significant number of census blocks, which Windstream did not include in its election.** In its analysis, Windstream found relevant ports in 11,119 census blocks, which were not included in its election.<sup>25</sup> Moreover, in an examination of porting data with respect to five major challengers to Windstream's election—Time Warner Cable, Comcast, Charter, Cox, and Mediacom—Windstream found that ports from its phone and broadband customers did not occur in any of the census blocks included in the election, but did occur in 11 percent of the census blocks served by those providers that Windstream did not include in its election. This demonstrates that relevant porting activity does occur in areas with a competitive presence, and the discrepancy between the percentage of ports in these two categories is difficult to explain away.

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<sup>22</sup> See Exhibit A to Comments of Mediacom, WC Docket No. 10-90 (Sept. 27, 2013) (Mediacom Challenge).

<sup>23</sup> See Service Electric Cablevision, Inc. Opposition to Windstream Election of 2013 Phase I Incremental Support, WC Docket No. 10-90 (Sept. 24, 2013) (Service Electric Challenge).

<sup>24</sup> See Exhibit A to Letter from David Auger, Chief Executive Officer, Mi Connection, to Marlene Dortch, Secretary, FCC, WC docket No. 10-90 (Sept. 27, 2013) (Mi Connection Challenge).

<sup>25</sup> See Declaration of Christopher B. Raper, Windstream Vice President – Consumer Analytics, attached hereto as Attachment 2, at ¶ 4 (Raper Declaration).

C. Windstream's Porting Analysis Is Probative And Should Be Viewed As Convincing When a Challenger Fails to Produce Specific, Direct Evidence as Rebuttal.

Because the challengers are not able to claim that Windstream incorrectly performed its porting analysis, many of them have gone to great lengths to identify circumstances in which a broadband competitor could be offering robust broadband in a census block and there would nevertheless be no number ports to that competitor from Windstream voice and broadband customers.<sup>26</sup> Windstream does not deny that there are some individual situations in which a consumer in a given census block could be receiving a broadband service from a competitor that would not result in a number port from a Windstream voice and broadband customer. However, this does not change the fact that is exceedingly unlikely that, in a census block where Windstream is offering less than 3/768 broadband service and there is purportedly a competitor offering 3/768 or better broadband service in the census block, there would not be at least one instance over an 18-month period where a Windstream voice and broadband customer would switch its service to the competitive provider. Thus, the total absence of such ports over an 18-month period is a strong indicator of the absence of broadband competition—and likely the best evidence that ILECs can reasonably offer—and it raises sufficient doubt that the competitive provider, which has complete control over any and all direct evidence of whether and where it offers service, must address with sufficient, specific “documented evidence.”<sup>27</sup>

The question at issue in this challenge process, as formulated by the Commission, is essentially this: whether it is more likely than not that a competitive provider serves at least one

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<sup>26</sup> See, e.g., Access Challenge at 2; Charter Challenge at 2; Cox Challenge at 6-8; Letter from Mary McManus, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 3 (Sept. 27, 2013) (Comcast Challenge); NCTA Challenge at 2-3; TWC Challenge at 8-9).

<sup>27</sup> See CAF Phase I Order at ¶ 33.

location in a given census block.<sup>28</sup> All direct evidence bearing on this question—the competitive provider’s customer lists, billing records, offerings by location, facilities maps, advertising records, etc.—is entirely within the possession of the competitive provider. If the burden were entirely on the ILEC in this situation, the ILEC would face a nearly impossible task: It must prove the negative: that the competitive provider does not serve even a single location in the census block.<sup>29</sup>

This task is virtually impossible for the ILEC to do in any systematic and independent way. Windstream alone is seeking funding for broadband deployment in 217,638 locations and had only 30 days to respond to challenges. Short of going door to door to *every* location in a census block and asking a person in each location to call the relevant competitive provider to request 3/768 broadband service, and then having those people sign declarations that they could not in fact receive such service, how is the ILEC to make this showing definitively? Such an exercise would be infeasible for even a single census block, let alone the hundreds or thousands in which each price cap ILEC is seeking CAF Phase I incremental support. Holding the ILEC to such a standard would go beyond what is required by the Commission’s Orders and effectively would render the challenge process a farce.

Thus, it makes sense that the ILEC should be required to utilize evidence to which it has access to raise sufficient question about whether a census block is served by a competitor, and then see if a challenger presents compelling evidence to the contrary. Windstream, faced with

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<sup>28</sup> See *id.* at ¶ 31, fn.63 (disallowing partial census block challenges); ¶ 32 (noting that challengers must “demonstrat[e] that the block is in fact served by fixed Internet access with speeds of 3 Mbps/768 kbps or higher.”).

<sup>29</sup> In contrast, several challengers would like to create a process whereby they are only required to show the mere *possibility* that they could decide to offer service to a single location in a census block in the future. See Section IV *infra*.

this situation, chose in its initial election to rely on substantive evidence in its possession: hard data on consumers switching voice service from one provider to another. Though Windstream does not have comparable data with respect to customers switching broadband service from one provider to another—such moves are not subject to the standardized porting process applicable to telephone numbers—Windstream set the parameters of its analysis to identify areas that likely do or do not have a broadband competitor.<sup>30</sup> Moreover, it used a very conservative standard. If there was even a single port from a Windstream voice and broadband provider to a wireline voice provider over an 18-month period in a given census block, Windstream assumed the presence of a broadband competitor and excluded the census block from its election.

These porting data should not be summarily dismissed because they do not offer a perfect indicator of lack of 3/768 broadband access. Windstream does not deny, as the challengers have noted at some length, that there are some circumstances in which a customer would take broadband from a competitive provider and not trigger a number port in Windstream’s records—for example, it could be a new customer moving into the area, or it could be choosing to take stand-alone broadband and retain its voice service from Windstream.<sup>31</sup> But if the challenge

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<sup>30</sup> Some challengers have asserted that Windstream’s porting analysis is flawed because it takes into account voice ports and a broadband competitor need not offer voice service to exclude an area from CAF Phase I eligibility. *See, e.g., Cox Challenge* at 6; *NCTA Challenge* at 2. Windstream recognizes this, though as previously noted it has set the parameters of its porting analysis—in particular focusing on ports from Windstream broadband customers—to attempt to identify the presence or absence of a broadband competitor. Nevertheless, to the extent the Commission considers this a shortcoming of the analysis in the CAF Phase I context, Windstream notes that its porting analysis is likely to be an even stronger indicator of the presence or absence of an unsubsidized competitor in the context of CAF Phase II, where a provider must offer voice to be considered an unsubsidized competitor. *See CAF Phase II Challenge Process Order* at ¶ 5.

<sup>31</sup> *See* footnote 19 *supra*.

process only were to consider perfect data sets, the Commission, to be consistent, also would need to disregard all the National Broadband Map data and many cable providers' submissions.

Moreover, as a general matter, it defies logic that, in a census block where Windstream is offering less than 3/768 broadband service and there is purportedly a competitor offering 3/768 or better broadband service in the census block, there would not be at least one instance over an 18-month period where a Windstream voice and broadband customer would switch its service to the competitive provider. What exceptions there are to this general rule can be readily identified by challengers. Thus, in the face of such evidence submitted by Windstream, it is reasonable and appropriate for the burden to shift to the competitive provider to prove Windstream wrong by putting forth compelling, specific evidence that it is providing broadband service in the given census block.

### **III. THE BUREAU SHOULD GRANT CHALLENGES BY COMPETITORS ONLY IF THEY ARE SUPPORTED BY DIRECT, DOCUMENTED EVIDENCE.**

Challenges “must be supported by some form of documented evidence.”<sup>32</sup> Thus the Bureau must examine carefully each challenge by a competitor and grant it only if the competitor shows, through direct evidence, that it offers service meeting the Commission’s requirements in the relevant census block. As discussed above, it is nearly impossible for an ILEC to prove through direct evidence that a competitor does not offer service to any locations in a given census block. It would be, however, comparably simple for a competitor to provide direct evidence—for example, even a single billing record—that it actually offers service in the census block. Indeed, several competitors provided such direct evidence for consideration, so any possible concerns about the difficulty or burden of producing such evidence should be discarded.

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<sup>32</sup> CAF Phase I Order at ¶ 33.

The Commission has required such documented evidence, and the Bureau should view the failure by other competitors to provide comparable direct evidence with extreme suspicion, and reject any challenge that does not rely on it. Mere assertions in the form of a certification must not suffice. It is incumbent upon the Bureau to ensure that such certifications are signed by an officer of the provider, under penalty of perjury, state that the provider offers 3/768 service to customers in a separately enumerated list of census blocks, and are supported by clear, documented evidence such as billing records, before the Bureau relies on such certifications and accompanying evidence to exclude a census block from CAF Phase I eligibility.

Generalized challenges, such as the ones offered by the four largest cable providers, are inadequate and should be soundly rejected by the Bureau. Indeed, the broad assertions of service by Charter, Comcast, Cox, and Time Warner Cable are contradicted by the service information the companies provide on their own websites. Attachment 3 to this document is a list of 4,595 United States Postal Service-certified addresses, categorized by census block, which represents all of the USPS-certified addresses in Windstream's service area in the 405 listed census blocks, all of which are challenged by one of the above-referenced cable providers.<sup>33</sup> All of these addresses were entered into the online service qualification tools of the companies (as pertinent) between October 20 and November 1, 2013, and produced on-screen responses stating that "service is not available" or some other comparable text.<sup>34</sup> Therefore, with respect to these 405 census blocks, encompassing 4,595 USPS-certified addresses, the cable providers' own

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<sup>33</sup> See Raper Declaration at ¶ 7.

<sup>34</sup> See *id.* Screen shots that show examples of these responses for each of the four providers are attached to the Raper Declaration.

websites state that no broadband service at speeds of at least 3 Mbps downstream/768 kbps upstream is available at even a single USPS address in Windstream’s service territory.<sup>35</sup>

These data call into question these generalized challenges and blanket statements made by these companies—such as Charter’s certification that it “offers and provides” the requisite broadband service in each of the challenged census blocks<sup>36</sup>—and perhaps shed light on why Comcast, Cox and Time Warner Cable studiously avoided providing certifications that they offer or provide service in the challenged census blocks,<sup>37</sup> let alone providing any billing records or such clear evidence to support their assertions. These four companies are in possession of all of the direct evidence regarding where they provide service, and bear the burden of “demonstrating that the [census] block is in fact served by fixed Internet access with speeds of 3 Mbps/768 kbps or higher,”<sup>38</sup> and yet have come forward with no such direct evidence, but instead issued carefully worded responses that are directly contradicted by publicly available information on their own websites. The Bureau must deem that this is not enough, reject their challenges as

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<sup>35</sup> See *id.* at ¶ 8.

<sup>36</sup> See Certification of Keith Hayes in Support of Charter Communications, Inc.’s Challenge to Certain Price Cap Carrier CAF Phase I, Round 2 Elections, attached to Charter Challenge (Hayes Certification).

<sup>37</sup> See Certification of Michael Ruger, Executive Director of Government Affairs, Comcast Cable Communications, attached to Comcast Challenge (Ruger Certification) (certifying only that its “broadband mapping materials are prepared under [its] direction and supervision,” and that the company supports the information in the third-party submission (which also does not state that Comcast “offers service” in the relevant census blocks); Declaration of Joiava Philpott, Vice-President, Regulatory Affairs, Cox Communications, Inc., attached to Cox Challenge (Philpott Declaration) (certifying only that “the factual statements in the Petition [which does not state that Cox provides or offers service in all challenged census blocks] are accurate”); Certification of Julie P. Laine, Group Vice President and Chief Counsel, Regulatory, Time Warner Cable Inc., attached as Attachment 3 to Time Warner Cable Challenge (Laine Certification) (stating only that TWC is “capable of” providing service in the challenged census blocks).

<sup>38</sup> CAF Phase I Order at ¶ 32.

inadequate, and grant Windstream’s election with respect to all of the blocks challenged by these providers.

If the Bureau does not apply such rigor in adjudicating challenges, then the Commission will have created an essentially toothless process, in which challengers can exclude large areas from CAF Phase I eligibility based on self-reported National Broadband Map data reinforced merely by conclusory statements and irrelevant data. The stakes are too high, and the evidence too weak, to give the competitor the benefit of the doubt in these decisions. The greatest losers will be the hundreds of thousands of consumers in locations that price cap ILECs know lack access to the robust broadband services that, as the Commission notes, “have become crucial to our nation’s economic growth, global competitiveness, and civic life.”<sup>39</sup>

#### **IV. THE BUREAU SHOULD REJECT CHALLENGES BASED ON ASSERTIONS THAT CENSUS BLOCKS ARE “SERVICEABLE.”**

The Commission has made clear that a challenger must “demonstrate that [a census] block *is in fact served* by fixed Internet access with speeds of 3 Mbps/768 kbps or higher” (emphasis added).<sup>40</sup> Nevertheless, numerous challengers assert that some or all of their challenged census blocks are not served currently but are “serviceable,” or that the challenger “could provide” or “is capable of providing” service there.<sup>41</sup> For example, Cox developed its

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<sup>39</sup> See *Connect America Fund*, WC Docket No. 10-90 et al., FCC 11-161, Report and Order and Further Notice of Proposed Rulemaking, at ¶ 3 (2011) (Comprehensive Reform Order).

<sup>40</sup> See CAF Phase I Order at ¶ 32.

<sup>41</sup> See, e.g., Charter Challenge at 1, Appendix B (stating that it “serves and/or passes” each census block and apparently providing a list of addresses “a current Charter broadband customer or Charter serviceable home” in each census block); Letter from Scott C. Obert-Thorn, Chief Financial Officer, ComSouth Telenet, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 27, 2013) (ComSouth Challenge) (stating that it “provides or can provide within 7-10 days” the requisite service); Letter from James L. Bond, President, Flint Cable TV, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 27, 2013) (Flint Challenge) (same); Mediacom Challenge at Exhibit A (providing list of census blocks with

challenge by examining network maps and node boundaries to identify census blocks that are “serviceable,” apparently without regard to billing or customer record evidence that would shed light on whether it actually serves the census blocks.<sup>42</sup> Similarly, Planters Communications provided a certification that it “provides or can provide” the requisite broadband service, and offered no additional evidence beyond vague maps that do not clearly set out customer locations or whether Planters serves or offers service to them.<sup>43</sup> To the extent challenges rely on assertions or evidence that census blocks are “serviceable” or “can be served” or are “capable” of being served but not that they actually are served, such challenges should be rejected because the challenger has not shown that the census blocks “are in fact served.”<sup>44</sup>

The stated objective of CAF Phase I is to provide service to locations that are “currently unserved” by robust fixed broadband.<sup>45</sup> “Serviceable,” “can be served,” or “capable” of being

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number of “serviceable homes”); Attachment 1 to Letter from Paul Milan, Vice President and General Counsel, Northland Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 25, 2013) (Northland Challenge) (asserting that in some census blocks Northland is “capable of providing broadband”); *See* Letter from E. Kelly Bond, President, Public Service Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 27, 2013) (Public Service Challenge) (stating that it “provides or can provide within 7-10 days” the requisite service); Certification of Michael J. Zarrilli, Vice President, Government Relations & Senior Counsel, Suddenlink Communications (Zarrilli Certification), attached to Letter from K.C. Halm, Counsel for Suddenlink Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 27, 2013) (Suddenlink Challenge) (including list of customer addresses or “serviceable home addresses”); Attachment A to Letter from Andrew S. Petersen, TDS Telecommunications Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 25, 2013) (TDS Challenge) (offering evidence only of “serviceable” locations in many census blocks); Laine Certification (stating that TWC is “capable of providing” service).

<sup>42</sup> *See* Cox Challenge at 2-5 (noting that “Cox’s process to identify census blocks to be challenged relied on current network node maps and real time analysis by local engineers”).

<sup>43</sup> *See* Letter from Stephen Milner, General Manager, Planters Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 27, 2013) (Planters Challenge).

<sup>44</sup> *See* CAF Phase I Order at ¶ 32.

<sup>45</sup> *See* Comprehensive Reform Order at ¶ 152.

served are not synonymous with “served,” and the fact that a census block is “serviceable” or “can be served” or is “capable” of being served by a competitor does not mean that competitor serves the census block or offers service in the census block or even that a location could reasonably receive such service upon request. It is unclear, for example, what facilities are currently built out to these locations, whether the potential customer would be required to pay a substantial fee to gain service, or whether the challenger is actively marketing to potential customers in the census block. Consumers residing in rural areas should not be deprived of an opportunity to have access to robust broadband because a competitive provider now asserts that it could provide service—though it hasn’t actually done so to date, has not actively sought customers in the census block, and there is no evidence that it plans to do so. Moreover, a “serviceable” standard would make the price cap carrier’s already difficult job of presenting probative evidence in the challenge process entirely impossible—it would have not only to show that a competitor is not providing or offering service to a single location in a census block, but to rebut the mere *possibility* that a provider could decide to offer service in a census block in the future.

This is not the standard articulated by the Commission, and it would not further the objectives of the CAF Phase I program: “to provide an immediate boost to broadband deployment in areas that are unserved by any broadband provider.”<sup>46</sup> Thus the Commission should reject challenges that are based on anything less than documented evidence that a competitor currently is serving a given census block.

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*Id.*

**V. THE BUREAU SHOULD NOT CONSIDER INFORMATION THAT WINDSTREAM HAS NOT HAD AN OPPORTUNITY TO REVIEW.**

Though the Commission in the *CAF Phase I Order* specified that “public disclosure is generally preferred, especially when the use of public funds is at issue,”<sup>47</sup> numerous challengers have provided key evidence confidentially, or indicated that they have withheld information they would provide confidentially upon Commission request.<sup>48</sup> Challengers have withheld this information despite ample opportunity to make the data available to Windstream so it could adequately respond—as Windstream did for all potential challengers to its application. In evaluating challenges to Windstream’s application, the Bureau should not consider any information that Windstream has not had an opportunity to review. To the extent, however, the Bureau does consider such information, which Windstream opposes, the Bureau should immediately adopt a streamlined protective order to allow price cap carriers and certain internal personnel to review the confidential information, and it should require challengers to produce all

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<sup>47</sup> See *CAF Phase I Order* at ¶ 27.

<sup>48</sup> See, e.g., Exhibit A to Access Challenge (apparently including entirely redacted list of customer addresses); Appendices A-C and Exhibits to Letter from K.C. Halm, Counsel to Armstrong Utilities, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 26, 2013) (Armstrong Challenge) (including redacted list, by census block, of homes passed, active customer counts, and pole and pedestal counts, and maps); Exhibit A to Connect America Fund Phase I – Round 2 Challenges of Atlantic Broadband, LLC, WC Docket No. 10-90 (Sept. 27, 2013) (Atlantic Challenge) (including redacted count of homes in each census block); Appendix B to Charter Challenge (including redacted list of addresses); Cox Challenge at 5 (noting that “upon Commission request . . . Cox will provide supplemental information to the Commission subject to confidential treatment.”); Exhibits A and B to Letter from Stephen E. Coran, Counsel to JAB Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 27, 2013) (JAB Challenge) (including partially redacted addresses of alleged customers); Exhibit C to Panhandle Telephone Cooperative, Inc. Connect America Fund Phase I Challenge, WC Docket No. 10-90, at 1-2 (Sept. 27, 2013) (Panhandle Challenge) (including bills with redacted addresses); Exhibit C to Letter from John Ogren, CEO, SpeedConnect LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 27, 2013) (SpeedConnect Challenge) (including entirely redacted “cross-section” of subscriber list); Suddenlink Challenge (including redacted list of customer addresses or “serviceable home addresses”); TWC Challenge at 5 (claiming that it has “customer count and address data” but declining to produce it).

evidence referenced in their filings pursuant to this protective order. Windstream should then be permitted to supplement its replies with any additional responses gleaned from examination of this information.

The National Cable and Telecommunications Association, of which many of the major challengers are members, has emphasized the need for “transparency” in the CAF Phase I process.<sup>49</sup> Price cap carriers were required to submit their elections publicly to facilitate review by potential challengers, and likewise if a challenger considers certain information probative to its challenge, the price cap carrier should be permitted to examine it and respond. Adoption of a protective order would preserve the balance between protecting customer privacy that the Bureau adopted in its Public Notice<sup>50</sup> and ensuring the efficient and effective use of CAF Phase I funding.

## **VI. THE BUREAU SHOULD REJECT PURPORTED “CHALLENGES” FROM ADJACENT RATE-OF-RETURN ILECS.**

Windstream received several “challenges” from rate-of-return ILECs that have service territories adjacent to Windstream’s service territories, and for which the boundary lines in some cases bisect census blocks that are included in Windstream’s elections.<sup>51</sup> As the Bureau noted in

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<sup>49</sup> See, e.g., Reply Comments of the National Cable & Telecommunications Association, WC Docket No. 10-90, at 7 (Feb. 11, 2013) (NCTA Reply Comments).

<sup>50</sup> See Public Notice, *Wireline Competition Bureau Reminds Connect America Phase I Challenge Participants to Protect Customer Privacy in Challenge Process*, WC Docket No. 10-90, DA 13-1988 (rel. Sept. 26, 2013) (Sept. 26 Public Notice).

<sup>51</sup> See, e.g., Attachment A to Letter from Robert R. Rozell, CEO/President, BTC Broadband, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 23, 2013) (Bixby Challenge); Letter from Allison Willoughby, General Manager, Brandenburg Telecom LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 23, 2013) (Brandenburg Challenge); Letter from Randy Daniel, President, Hart Telephone Company and Hart Cable, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 26, 2013); Letter from Delbert Wilson, CEO, Hill Country Telephone Cooperative, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 25, 2013) (HCTC Challenge); Letter from James

a Public Notice prior to the challenge deadline, “the Phase I challenge process is focused solely on areas within the price cap carrier’s territory,” and “there is no need for rate of return incumbent carriers to participate in the challenge process merely to confirm they serve the portion of the census block within their study areas.”<sup>52</sup> Windstream has elected to serve only census blocks and portions therein that are part of its service areas. Thus, the Bureau should not exclude census blocks from CAF Phase I eligibility on the basis of these improper “challenges.” To the extent these filings by rate-of-return ILECs evince study area boundary disagreements, such disagreements should be addressed through the Commission’s separate effort to gather study area boundary data and resolve any gaps and overlaps.<sup>53</sup>

**VII. THE VAST MAJORITY OF THE CHALLENGES TO WINDSTREAM’S ELECTION ARE INSUFFICIENT AND MUST BE REJECTED.**

Windstream responds herein individually to the challenges to its election. As noted above, challengers must demonstrate that a census block “is in fact served by fixed Internet access with speeds of 3 Mbps/768 kbps or higher,”<sup>54</sup> and their filings “must be supported by some form of documented evidence.”<sup>55</sup> Moreover, “the Bureau should not consider conclusory

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D. McCarson, Vice President, Corporate Administration, North State Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 27, 2013) (North State Challenge); Letter from Stephen Milner, General Manager, Planters Rural Telephone Cooperative, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 27, 2013) (Planters RTC Challenge).

<sup>52</sup> Public Notice, Phase I Challenge Process Limited to Price Cap Areas, WC Docket No. 10-90, DA 13-1972 (Sept. 14, 2013) (Sept. 14 Public Notice).

<sup>53</sup> See, e.g., Public Notice, Wireline Competition Bureau Announces Procedures and Deadlines for Submissions of Study Area Boundaries, WC Docket Nos. 10-90, 05-337, DA 13-456 (March 18, 2013) (March 18 Public Notice).

<sup>54</sup> CAF Phase I Order at ¶ 32.

<sup>55</sup> *Id.*

assertions without supporting evidence . . . .”<sup>56</sup> A few of the challengers have filed evidence that appears to have fulfilled their burden by providing valid certifications accompanied by detailed maps of networks and customer locations, specific account information and/or billing records. Based on this evidence, Windstream does not oppose these challenges.<sup>57</sup> The vast majority of challengers, however, have failed to make such a demonstration, and their challenges should be rejected as insufficient or invalid, for the reasons stated below.

A. Access Cable Television, Inc.

The only evidence provided to support Access’ certification is apparently a list of addresses of subscribers served and the LAT/LONGs of their locations.<sup>58</sup> However, the list is entirely redacted, so Windstream is not able to perform any independent check or verification. The Commission in the *CAF Phase I Order* specified that “public disclosure is generally

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<sup>56</sup> *Id.*

<sup>57</sup> See Letter from Bob Loveridge, GM/Director of Operations, Blue Devil Cable TV, Inc., to FCC, WC Docket No. 10-90 (Sept. 12, 2013) (challenging 22 census blocks); Letter from Jeff Crandall, Director of Operations, Blue Ridge Communications, to FCC, WC Docket No. 10-90 (Sept. 25, 2013) (challenging 21 census blocks); Letter from Matthew L. Dosch, Senior Vice President of External Affairs, Comporium, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 27, 2013) (challenging 6 census blocks); Letter from Darren Kimsey, Gis Engineer, Ellijay Telephone Company, to FCC, WC Docket No. 10-90 (undated) (challenging 16 census blocks); Letter from Ronald J. Laudner, Jr., President & CEO, Farmers Telephone Company of Riceville, Iowa, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 27, 2013) (challenging 5 census blocks); Letter from Clay F. Manley III, Managing Partner, Inside Connect Cable, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 26, 2013) (challenging 14 census blocks); Mi Connection Challenge (challenging 3 census blocks); Letter from John Strode, Vice President - External Affairs, Ritter Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90,05-337 (Sept. 20, 2013) (challenging 4 census blocks); Service Electric Challenge (challenging 2 census blocks); Comments of South Slope Cooperative Telephone Company, WC Docket No. 10-90 (Sept. 25, 2013) (challenging 6 census blocks).

<sup>58</sup> See Exhibit A to Access Challenge.

preferred, especially when the use of public funds is at issue.”<sup>59</sup> In addition, the National Cable and Telecommunications Association has emphasized the need for “transparency” in the CAF Phase I process,<sup>60</sup> and noted that such transparency would facilitate the prompt resolution of challenges.<sup>61</sup> This is equally true in the context of all documents filed in the challenge process.

Because Access does not publicly provide any documented evidence to support its certification, its challenge should be dismissed.

B. Alenco Communications Inc. (ACI)

ACI has submitted nothing more than a certification asserting that it offers service in an attached list of census blocks.<sup>62</sup> The Commission has made clear that “all filings in the challenge process, whether from a price cap carrier or another provider, must be supported by some form of documented evidence.”<sup>63</sup> ACI’s certification is not so supported, so its challenge should be rejected.

C. Armstrong Utilities

Armstrong has submitted a certification by a Vice President;<sup>64</sup> it is unclear whether he is an officer of the company, as clearly requested by the Commission.<sup>65</sup> It is questionable why Armstrong would not have provided a certification by a person who is clearly an officer or attested to that fact, and it raises doubt as to the accuracy of Armstrong’s submission.

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<sup>59</sup> CAF Phase I Order at ¶ 27.

<sup>60</sup> *See, e.g.*, NCTA Reply Comments at 7.

<sup>61</sup> *See id.* at 8.

<sup>62</sup> *See* Certification of Sidd Applin and Schedule A, attached to Letter from Gail Odell, Authorized Representative for Alenco Communications, Inc. dba ACI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 27, 2013).

<sup>63</sup> CAF Phase I Order at ¶ 33.

<sup>64</sup> *See* Armstrong Challenge.

<sup>65</sup> CAF Phase I Order at ¶ 33.

The certification is apparently accompanied by a list, by census block, of homes passed, active customer counts, and pole and pedestal counts, as well as network maps.<sup>66</sup> However the list and maps are redacted, so Windstream is not able to perform any independent check or verification. The Commission in the *CAF Phase I Order* specified that “public disclosure is generally preferred, especially when the use of public funds is at issue.”<sup>67</sup> In addition, the National Cable and Telecommunications Association has emphasized the need for “transparency” in the CAF Phase I process,<sup>68</sup> and noted that such transparency would facilitate the prompt resolution of challenges.<sup>69</sup> This is equally true in the context of all documents filed in the challenge process.

D. Atlantic Broadband

Atlantic apparently provides, as support for its certification, a count of homes served in each challenged census block.<sup>70</sup> However, this document is entirely redacted, and Atlantic does not provide any further detail, such as address, that would enable Windstream to perform an independent check or verification. The Commission in the *CAF Phase I Order* specified that “public disclosure is generally preferred, especially when the use of public funds is at issue.”<sup>71</sup> In addition, the National Cable and Telecommunications Association has emphasized the need for “transparency” in the CAF Phase I process,<sup>72</sup> and noted that such transparency would

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<sup>66</sup> See Appendices A-C and Exhibits to Armstrong Challenge.

<sup>67</sup> CAF Phase I Order at ¶ 27.

<sup>68</sup> See, e.g., NCTA Reply Comments at 7.

<sup>69</sup> See *id.* at 8.

<sup>70</sup> See Exhibit A to Atlantic Challenge.

<sup>71</sup> CAF Phase I Order at ¶ 27.

<sup>72</sup> See, e.g., NCTA Reply Comments at 7.

facilitate the prompt resolution of challenges.<sup>73</sup> This is equally true in the context of all documents filed in the challenge process.

E. Bixby Telephone Company

Bixby, whose service territory is adjacent to Windstream's, "challenges" with respect to 2 census blocks that are bisected by the boundary between the two companies' study areas.<sup>74</sup> As the Bureau noted in a Public Notice prior to the challenge deadline, "the Phase I challenge process is focused solely on areas within the price cap carrier's territory," and "there is no need for rate of return incumbent carriers to participate in the challenge process merely to confirm they serve the portion of the census block within their study areas."<sup>75</sup> Windstream intends to serve locations only in its own territory with CAF Phase I support, and because Bixby is filing to protect its ILEC service area, its "challenge" should be dismissed.

To the extent Bixby's filing demonstrates a study area boundary disagreement, such disagreements should be addressed through the Commission's separate effort to gather study area boundary data and resolve any gaps and overlaps, and should not serve to exclude areas in this process.<sup>76</sup>

F. Bluegrass Cellular

Bluegrass' challenge should be rejected because Bluegrass does not appear to be offering a fixed wireless service, as required by the Commission.<sup>77</sup> Bluegrass Cellular is a mobile

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<sup>73</sup> See *id.* at 8.

<sup>74</sup> See Attachment A to Bixby Challenge.

<sup>75</sup> Sept. 14 Public Notice.

<sup>76</sup> See, e.g., March 18 Public Notice.

<sup>77</sup> See Comprehensive Reform Order at ¶ 104 (noting that a wireless provider that currently offers mobile service can only exclude an area from CAF support "by offering a fixed wireless service").

wireless provider, as evidenced by the fact that it uses Code 80 for Terrestrial Mobile Service on its submissions to the National Broadband Map.<sup>78</sup> From examining its website, it appears that Bluegrass Cellular offers an option to set up a “private hotspot” using a stationary modem, but not a true fixed wireless service with a fixed antenna.<sup>79</sup>

Moreover, though the declaration of its CEO states that Bluegrass offers a fixed wireless service “throughout its 4G LTE network and service areas,”<sup>80</sup> Bluegrass’ own website notes that the “wireless internet data” service (never referred to as fixed wireless) is only available in “select areas.”<sup>81</sup> While Bluegrass in its challenge submission provides advertisements of its wireless internet data service (again, never called “fixed wireless”), there is no evidence that such advertisements are circulated to the relevant census blocks, and the certifying party does not discuss these advertisements.<sup>82</sup>

Furthermore, Bluegrass, as befits a mobile wireless provider, bases its challenge largely on an analysis of whether it serves the centroid, or geometric center, of the relevant census blocks.<sup>83</sup> This type of analysis is applicable in the context of the Mobility Fund<sup>84</sup> but is not probative of whether Bluegrass Cellular serves customer locations in a given census block,

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<sup>78</sup> See NBM Broadband Provider List, available at <http://www.broadbandmap.gov/data-download> (last visited Nov. 1, 2013) (showing all five FRNs for Bluegrass Cellular coded as 80, for Terrestrial Mobile Wireless, rather than 70 or 71 for Fixed Wireless).

<sup>79</sup> See Plans & Features, Wireless Internet Data, available at <https://store.bluegrasscellular.com/plans/detail/wireless-internet-data> (last visited Oct. 29, 2013).

<sup>80</sup> See Declaration of Ronald Smith, President and CEO, Bluegrass Cellular Inc., attached as Attachment E to Census Block Challenge of Bluegrass Cellular, Inc., WC Docket No. 10-90 (Sept. 27, 2013) (Bluegrass Challenge).

<sup>81</sup> See Plans & Features, Wireless Internet Data, available at <https://store.bluegrasscellular.com/plans/detail/wireless-internet-data> (last visited Oct. 29, 2013).

<sup>82</sup> See Attachment A to Bluegrass Challenge.

<sup>83</sup> See Bluegrass Challenge at 3-4.

<sup>84</sup> See, e.g., Comprehensive Reform Order at ¶ 344.

which is the relevant question in this challenge process.<sup>85</sup> The map evidence provided by Bluegrass is derived from this centroid analysis and thus is equally not probative.<sup>86</sup>

Bluegrass provides four sample bills—despite the fact that it challenges several hundred census blocks.<sup>87</sup> The addresses of the bills are redacted, despite the fact that the Bureau offered guidance that submitting addresses is permissible.<sup>88</sup> Thus, Windstream is not able to perform any independent check or verification, or even link the billing records to particular census blocks. Moreover, only one of these bills appears to be for a wireless internet data service. The others do not indicate they are for a fixed wireless service, which is contrary to the Bureau’s guidance.<sup>89</sup>

In sum, Bluegrass has not backed up its declaration with any relevant “documented evidence”<sup>90</sup> that it is offering the requisite service, with the possible exception of a single bill that cannot be tied to a particular census block because the address is almost fully redacted.

Finally, it should be noted that Bluegrass is not an unsubsidized provider. According to USAC’s records, Bluegrass is a wireless eligible telecommunications carrier that is projected to receive a substantial amount of federal high-cost support in the fourth quarter of 2013.<sup>91</sup>

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<sup>85</sup> See CAF Phase I Order at ¶ 32 (noting that challengers must “demonstrat[e] that the block is in fact served by fixed Internet access with speeds of 3 Mbps/768 kbps or higher”).

<sup>86</sup> See Attachment C to Bluegrass Challenge.

<sup>87</sup> See Attachment E to Bluegrass Challenge.

<sup>88</sup> See Sept. 26 Public Notice.

<sup>89</sup> See *id.* at 1 (“submitted customer records should only include the address of service and sufficient information to support a claim that fixed Internet access with speeds of 3 Mbps/768 kbps or higher is being provided”).

<sup>90</sup> See CAF Phase I order at ¶ 33.

<sup>91</sup> See USAC 2013 Fourth Quarter Appendices, [HC01 High Cost Support Projected by State by Study Area - 4Q2013.xls](#), available at <http://www.usac.org/about/tools/fcc/filings/2013/q4.aspx> (last visited Oct. 31, 2013).

G. Boycom Cablevision, Inc.

Boycom's officer certification<sup>92</sup> is not offered under penalty of perjury, as clearly requested by the Commission.<sup>93</sup> This fact raises doubt as to the accuracy of Boycom's submission, and the certification should be rejected as insufficient.

Boycom offers billing records to support its certification. However, the bills for only 23 of the 76 challenged census blocks demonstrate evidence of the provision of internet service at speeds of at least 3/768. Most of the bills show only video subscriptions.

Thus, Boycom's challenge should be dismissed with respect to all the challenged census blocks because of the insufficient officer certification or, if not, at least with respect to the 53 challenged census blocks for which Boycom failed to provide evidence of actual broadband service (let alone of at least 3/768 speeds).

H. Brandenburg Telecom LLC

Brandenburg, whose service territory is adjacent to Windstream's, "challenges" with respect to 7 census blocks that apparently are bisected by the boundary between the two companies' study areas.<sup>94</sup> As the Bureau noted in a Public Notice prior to the challenge deadline, "the Phase I challenge process is focused solely on areas within the price cap carrier's territory," and "there is no need for rate of return incumbent carriers to participate in the challenge process merely to confirm they serve the portion of the census block within their study areas."<sup>95</sup> Windstream intends to serve locations only in its own territory with CAF Phase I

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<sup>92</sup> See Letter from Jerry Whitlow, COO, Boycom Cablevision Inc., to FCC (Sept. 24, 2013).

<sup>93</sup> See *id.*

<sup>94</sup> See Brandenburg Challenge.

<sup>95</sup> Sept. 14 Public Notice.

support, and because Brandenburg is filing to protect its ILEC service area, its “challenge” should be dismissed.

To the extent Brandenburg’s filing demonstrates a study area boundary disagreement, such disagreements should be addressed through the Commission’s separate effort to gather study area boundary data and resolve any gaps and overlaps, and should not serve to exclude areas in this process.<sup>96</sup>

I. Cable One, Inc.

Cable One has offered a certification by a Vice President, Central Division;<sup>97</sup> it is unclear whether the certifying party is an officer of the company, as clearly requested by the Commission.<sup>98</sup> It is questionable why Cable One would not have provided a certification by a person who is clearly an officer or attested to that fact, and it raises doubt as to the accuracy of Cable One’s submission.

Cable One includes no evidence supporting its certification. It claims it has developed its list of census blocks by cross-referencing the Commission’s list with its “map and database of its Internet Service territory.”<sup>99</sup> It is unclear how and from what this map and database are derived. To the extent this information informed Cable One’s National Broadband Map data, Cable One is making an entirely circular argument. The whole purpose of this challenge process is to determine, based on *other* evidence, whether the National Broadband Map designation is

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<sup>96</sup> See, e.g., March 18 Public Notice.

<sup>97</sup> Declaration of T. Mitchell Bland, Vice President, Central Division, Cable One, Inc., attached to Comments of Cable One, Inc., WC Docket No. 10-90 (Sept. 27, 2013) (Cable One Challenge).

<sup>98</sup> CAF Phase I Order at ¶ 33.

<sup>99</sup> Declaration of T. Mitchell Bland. See also Cable One Challenge at 1.

correct.<sup>100</sup> Cable One offers *no* other evidence, such as billing records, system or location maps, or customer addresses. Windstream therefore has no meaningful opportunity to validate whether Cable One’s claims are appropriately grounded in facts.

The Commission has made clear that “all filings in the challenge process, whether from a price cap carrier or another provider, must be supported by some form of documented evidence.”<sup>101</sup> Cable One’s generic certification, without more, should not be deemed sufficient, and its challenge should be rejected.

#### J. Charter Communications

Charter has offered a certification by a Senior Vice President of Network Operations;<sup>102</sup> it is unclear whether the certifying party is an officer of the company, as clearly requested by the Commission.<sup>103</sup> It is questionable why Charter would not have provided a certification by a person who is clearly an officer or attested to that fact, and it raises doubt as to the accuracy of Charter’s submission.

Charter certifies that it “offers and provides” the requisite broadband service in each of the census blocks listed in an Appendix.<sup>104</sup> However, this is directly contradicted by information publicly available on Charter’s own website. Attachment 3 to this document is a list of 1,675 United States Postal Service-certified addresses, categorized by census block, which represents all of the USPS-certified addresses in Windstream’s service area in 142 listed census blocks that

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<sup>100</sup> See CAF Phase I Order at ¶ 33 (noting that Bureau must determine, based on “documented evidence,” whether it is “more likely than not that the status of a census block should be treated differently than the status shown on the National Broadband Map”).

<sup>101</sup> *Id.*

<sup>102</sup> See Hayes Certification.

<sup>103</sup> See CAF Phase I Order at ¶ 33.

<sup>104</sup> See Hayes Certification.

Charter has challenged.<sup>105</sup> All of these addresses were entered into Charter’s online service qualification tool between October 20 and November 1, 2013, and produced on-screen responses stating that “Charter services are not available” or some other comparable text.<sup>106</sup> Therefore, with respect to these 142 census blocks, encompassing 1,675 USPS-certified addresses, Charter’s own website tool states that no broadband service is available at even a single USPS address in Windstream’s service territory.<sup>107</sup> In addition, in 80 CBs, encompassing 689 USPS addresses, Charter’s online qualification tool provided for each address an inconclusive statement such as “Charter is available in your area! However, in order to see what specific offers are available at your address, please give us a call at the number below or Chat Now with a live operator.”<sup>108</sup> Thus, Charter’s own website does not make clear that it provides 3/768 broadband service to a single address in these CBs. In light of this finding, Charter’s certification and entire challenge should be rejected.

In addition, despite the fact that Charter certifies that it “offers and provides” service, in the cover letter attached to its certification, Charter only states that it “serves and/or passes multiple homes” in each census block, and Charter apparently includes a list of addresses of “a current Charter broadband customer or Charter serviceable home” in each census block. Thus it is not clear whether Charter actually serves each census block or merely allegedly has a “serviceable home” in the census block.<sup>109</sup> This lack of clarity is exacerbated by the fact that

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<sup>105</sup> See Raper Declaration at ¶ 7-8.

<sup>106</sup> See *id.* Screen shots that show examples of these responses for each of the four providers are attached to the Raper Declaration.

<sup>107</sup> See *id.* at ¶ 8. See also Attachment 3.

<sup>108</sup> See *id.* at ¶ 9. See also Attachment 4.

<sup>109</sup> See Charter Challenge at 1.

Charter does not explain the methodology underlying its certification, or why the Commission, Windstream, and consumers who will otherwise be denied broadband service should have confidence to rely on the analysis.

To the extent it apparently lacks customers in a given census block and merely lists “a serviceable home,” Charter is not fulfilling its burden of demonstrating that the census block “is in fact served,”<sup>110</sup> as required by the Commission. The objective of CAF Phase I is to provide service to locations that are “currently unserved” by robust fixed broadband.<sup>111</sup> “Serviceable” is not synonymous with “served,” and the fact that a location is “serviceable” by a competitor does not mean that the competitor serves the area or offers service in the area or even that the potential customer could receive such service within a reasonable timeframe upon request. Charter does not define what it means by serviceable—for example, what facilities are already built out to the locations, whether the potential customer would be required to pay a substantial fee to gain service, or in what timeframe such a customer would be able to receive service at the required speeds.

Moreover, as noted above, Charter apparently includes a list of addresses of a current Charter broadband customer or Charter “serviceable” home in each of the census blocks listed in the Appendix,<sup>112</sup> but it has redacted the addresses so Windstream is not able to perform any independent check or verification. The Commission in the *CAF Phase I Order* specified that “public disclosure is generally preferred, especially when the use of public funds is at issue.”<sup>113</sup> In addition, the National Cable and Telecommunications Association, of which Charter is a

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<sup>110</sup> CAF Phase I Order at ¶ 32.

<sup>111</sup> See Comprehensive Reform Order at ¶ 137.

<sup>112</sup> See Appendix B to Charter Challenge.

<sup>113</sup> CAF Phase I Order at ¶ 27.

major member, has emphasized the need for “transparency” in the CAF Phase I process,<sup>114</sup> and noted that such transparency would facilitate the prompt resolution of challenges.<sup>115</sup> This is equally true in the context of all documents filed in the challenge process. As stated above, the Bureau should not rely on information that the price cap carrier has not had a reasonable opportunity to review.

Finally, Charter’s challenge does not include any billing records, network maps, or information regarding the number of served locations per census block so the Commission, Windstream and consumers are unable to conduct their own reviews of the facts underlying Charter’s assertions.

K. Comcast Cable Communications

Comcast Cable Communications, the largest cable provider in the nation and part of a corporation that had \$62.6 billion in revenue in 2012, filed one of the least-documented challenges to Windstream’s election. Further, as a general matter, Comcast presents its information in a manner that avoids the direct statements, albeit often unsupported, made by most other challengers.

Comcast has offered certifications by a third-party vendor and by an Executive Director, Government Affairs;<sup>116</sup> it is almost certain that the third-party vendor is not an officer of Comcast, and it is unclear whether the second one is, as clearly requested by the Commission.<sup>117</sup> If not, it is questionable why Comcast would not have provided a certification by a person who is

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<sup>114</sup> See, e.g., NCTA Reply Comments at 7.

<sup>115</sup> See *id.* at 8.

<sup>116</sup> See Certification of Hugh D. Gwynn, Chief Executive Officer, Gwynn Group, Inc., and Ruger Certification.

<sup>117</sup> Windstream acknowledges that only one officer certification would be required and merely discusses Comcast’s third-party vendor in this context for the sake of completeness.

clearly an officer or attested to that fact, and it raises doubt as to the accuracy of Comcast's submission.

Moreover, Comcast does not certify that it offers the requisite service in any or all of the relevant census blocks, though the Commission specifically noted that "the Bureau may consider such evidence as a signed certification from an officer of the provider under penalty of perjury that it offers 3 Mbps/768 kbps Internet service to customers in that particular census block."<sup>118</sup> Comcast certifies only that its "broadband mapping materials are prepared under [its] direction and supervision," and that the company supports the information in the third-party submission (which also does not state that Comcast "offers service" in the relevant census blocks).<sup>119</sup> Again, the fact that Comcast does not provide a certification that adheres to the specifications set forth by the Commission raises substantial doubt about the accuracy of its submission, and without more, Comcast's certifications should be rejected as insufficient.

Perhaps Comcast's certification is as circumspect as it is because any clear assertion that it offers or provides service in the challenged census blocks would be directly contradicted by information publicly available on Comcast's own website. Attachment 3 to this document includes a list of 2,340 United States Postal Service-certified addresses, categorized by census block, which represent all of the USPS-certified addresses in Windstream's service area in 222 listed census blocks that Comcast has challenged.<sup>120</sup> All of these addresses were entered into Comcast's online service qualification tool between October 20 and November 1, 2013, and produced on-screen responses stating that "Comcast service is not available" or some other

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<sup>118</sup> CAF Phase I Order at ¶ 33.

<sup>119</sup> See Rugar Certification.

<sup>120</sup> See Raper Declaration at ¶ 7-8.

comparable text.<sup>121</sup> Therefore, with respect to these 222 census blocks, encompassing 2,340 USPS-certified addresses, Comcast’s own website tool states that no broadband service is available at even a single USPS address in Windstream’s service territory.<sup>122</sup> In light of this finding, Comcast’s certification and entire challenge should be rejected.

By certifying in the circumspect manner it does, Comcast is essentially relying singularly on its National Broadband Map data to support its challenge, and thus is making a circular argument. The whole purpose of this challenge process is to determine, based on *other* evidence, whether the National Broadband Map designation is correct.<sup>123</sup> Comcast offers *no* other evidence, such as billing records, system or location maps, or customer addresses. In addition, the fallibility of Comcast’s map data is reinforced by the fact that it has conceded 120 of the blocks that Windstream elected that were marked as served by Comcast on the relevant version of the National Broadband map (June 2012 data).

Other than its insufficient certifications, Comcast offers only lists of census blocks—no billing records, network maps, or information regarding the number of served locations per census block—so the Commission, Windstream and consumers are unable to conduct their own review of the facts underlying Comcast’s assertions. Thus Comcast’s challenge should be denied because it is not sufficiently “supported by some form of documented evidence,” as the Commission requires.<sup>124</sup> Moreover, as noted above, where a provider fails to adhere to specific

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<sup>121</sup> *See id.* Screen shots that show examples of these responses for each of the four providers are attached to the Raper Declaration.

<sup>122</sup> *See id.* at ¶ 8.

<sup>123</sup> *See* CAF Phase I Order at ¶ 33 (noting that Bureau must determine, based on “documented evidence,” whether it is “more likely than not that the status of a census block should be treated differently than the status shown on the National Broadband Map”).

<sup>124</sup> *Id.*

recommendations by the Commission, it raises substantial doubt about the accuracy of its submission.

L. ComSouth Telenet, Inc.

ComSouth provides a certification that it “provides or can provide within 7-10 days broadband service at or above 3 Mbps download, 768 kbps upload in the census blocks identified on the attached lists.”<sup>125</sup> However, as best Windstream can determine, ComSouth did not attach such lists, so it is impossible to determine conclusively how many census blocks ComSouth is challenging of the 117 that Windstream elected.

Moreover, to the extent that ComSouth does not currently provide service in any census blocks, it is not fulfilling its burden of demonstrating that the census block “is in fact served,”<sup>126</sup> as required by the Commission. The objective of CAF Phase I is to provide service to locations that are “currently unserved” by robust fixed broadband.<sup>127</sup> “Can provide within 7-10 days” is not synonymous with “served,” and the fact that a location can be served by a competitor does not mean that the competitor serves the area or offers service in the area or even that the potential customer could receive such service upon request. ComSouth does not define what it means by “can provide [service] within 7-10 days”—for example, what facilities are already built out to the locations, or whether the potential customer would be required to pay a substantial fee to gain service.

ComSouth provided copies of bills with respect to 41 of the 117 census blocks that Windstream elected. However, at least seven of those bills, representing seven census blocks—

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<sup>125</sup> See ComSouth Challenge.

<sup>126</sup> CAF Phase I Order at ¶ 32.

<sup>127</sup> See Comprehensive Reform Order at ¶ 137.

131530212011037, 131530212011163, 131530213001096, 131530214003007, 131530215002122, 131530215002165, and 131530215003165—do not include service of at least 3/768. Thus, at the least, the challenge with respect to those census blocks should be dismissed as lacking documented evidence. To the extent ComSouth intends to challenge any of the 76 census blocks for which it did not submit bills, those challenges should be dismissed as well because they lack any documented evidence, as required by the Commission.<sup>128</sup>

M. Cox Communications

Cox has offered a certification by a Vice President of Regulatory Affairs, and several supporting certifications by regional vice presidents of a cable provider subsidiary.<sup>129</sup> It is unclear whether any of the certifying parties is an officer of the company, as clearly requested by the Commission.<sup>130</sup> It is questionable that Cox would not have provided a certification by a person who is clearly an officer or attested to that fact, and it raises doubt as to the accuracy of Cox's submission.

Moreover, Cox does not include in any certification a statement that it offers the requisite service in any or all of the relevant census blocks, though the Commission specifically noted that “the Bureau may consider such evidence as a signed certification from an officer of the provider under penalty of perjury that it offers 3 Mbps/768 kbps Internet service to customers in that

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<sup>128</sup> See CAF Phase I Order at ¶ 33.

<sup>129</sup> See Philpott Declaration. See also Declarations of Percy Kirk, Senior Vice President and General Manager of the Central Region for CoxCom, LLC, Daniel Hutto, Vice President of Business Operations of the Southwest Region for CoxCom, LLC, Jacqueline Vines, Senior Vice President and General Manager of the Southeast Region for CoxCom, LLC, and Nicholas DiPonzio, Vice President of HFC Network Maintenance and Construction for CoxCom, LLC, attached to Cox Challenge.

<sup>130</sup> CAF Phase I Order at ¶ 33.

particular census block.”<sup>131</sup> Again, the fact that Cox does not provide a certification that adheres to the recommendations set forth by the Commission raises substantial doubt about the accuracy of its submission, and Cox’s certifications should be rejected as insufficient.

Perhaps Cox’s certification is as circumspect as it is because any clear assertion that it offers or provides service in the challenged census blocks would be directly contradicted by information publicly available on Cox’s own website. Attachment 3 to this document includes a list of 567 United States Postal Service-certified addresses, categorized by census block, which represent all of the USPS-certified addresses in Windstream’s service area in 39 listed census blocks that Cox has challenged.<sup>132</sup> All of these addresses were entered into Cox’s online service qualification tool between October 20 and November 1, 2013, and produced on-screen responses stating that “Cox service is not available” or some other comparable text.<sup>133</sup> Therefore, with respect to these 39 census blocks, encompassing 567 USPS-certified addresses, Cox’s own website tool states that no broadband service at speeds is available at even a single USPS address in Windstream’s service territory.<sup>134</sup> In light of this finding, Cox’s statement that its submission “is sufficient to demonstrate Cox offers service in the challenged census blocks” is clearly incorrect, and Cox’s entire challenge should be rejected.

Furthermore, Cox’s submission is deficient because it does not include any “documented evidence” that it offers 3/768 service in the relevant census blocks, as required by the

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<sup>131</sup> *Id.*

<sup>132</sup> *See* Raper Declaration at ¶ 7-8 (Raper Declaration).

<sup>133</sup> *See id.* Screen shots that show examples of these responses for each of the four providers are attached to the Raper Declaration.

<sup>134</sup> *See id.* at ¶ 8.

Commission.<sup>135</sup> Cox explains a process by which it apparently examined network maps and node boundaries and identified census blocks with node boundaries which may or may not have serviceable addresses on record.<sup>136</sup> A “serviceable address” is not defined as an address at which Cox offers service, and indeed the entire process does not help Cox fulfill its burden of demonstrating that a census block “is in fact served,”<sup>137</sup> as required by the Commission.

The objective of CAF Phase I is to provide service to locations that are “currently unserved” by robust fixed broadband.<sup>138</sup> “Serviceable” is not synonymous with “served,” and the fact that a location is “serviceable” by a competitor does not mean that the competitor serves the area or offers service in the area or even that the potential customer could receive such service upon request without having to pay a substantial fee.

Cox did not provide any substantive evidence that it serves or offers service in the relevant census blocks, such as billing records, customer address lists, or customer location maps. In addition, the evidence Cox purportedly did rely on was not provided, so Windstream is not able to perform any independent check or verification.<sup>139</sup> The Commission in the *CAF Phase I Order* specified that “public disclosure is generally preferred, especially when the use of public funds is at issue.”<sup>140</sup> In addition, the National Cable and Telecommunications Association, of which Cox is a major member, has emphasized the need for “transparency” in the CAF Phase I

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<sup>135</sup> *See id.*

<sup>136</sup> *See Cox Challenge* at 2-6 (Sept. 27, 2013).

<sup>137</sup> CAF Phase I Order at ¶ 32.

<sup>138</sup> *See Comprehensive Reform Order* at ¶ 137.

<sup>139</sup> *See Cox Challenge* at 5.

<sup>140</sup> CAF Phase I Order at ¶ 27.

process,<sup>141</sup> and noted that such transparency would facilitate the prompt resolution of challenges.<sup>142</sup> This is equally true in the context of all documents filed in the challenge process.

N. Duo County Telephone Cooperative Corp.

Duo County files challenges with respect to 24 census blocks that it claims are entirely within its ILEC study area.<sup>143</sup> Windstream has examined its study area boundary maps and concedes that 20 of these census blocks appear to be outside Windstream’s service area. For the other four –212079601011002, 212079601011004, 212079601011005, and 212079601011010—the census blocks apparently are bisected by the boundary between the two companies’ study areas.

As the Bureau noted in a Public Notice prior to the challenge deadline, “the Phase I challenge process is focused solely on areas within the price cap carrier’s territory,” and “there is no need for rate of return incumbent carriers to participate in the challenge process merely to confirm they serve the portion of the census block within their study areas.”<sup>144</sup> Windstream intends to serve locations only in its own territory with CAF Phase I support, and because Duo County is filing to protect its ILEC service area, its “challenge” with respect to these four census blocks should be dismissed.

To any extent Duo County’s filing demonstrates a study area boundary disagreement, such disagreements should be addressed through the Commission’s separate effort to gather

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<sup>141</sup> See, e.g., NCTA Reply Comments at 7.

<sup>142</sup> See *id.* at 8.

<sup>143</sup> See Attachment A to Letter from Thomas E. Preston, Chief Executive Officer, Duo County Telephone Cooperative Corporation, Inc., to Marlene H. Dortch, WC Docket No. 10-90 (Sept. 27, 2013).

<sup>144</sup> Sept. 14 Public Notice.

study area boundary data and resolve any gaps and overlaps, and should not serve to exclude areas in this process.<sup>145</sup>

O. Duo County Telecom (Cumberland Cellular, Inc.)

With regard to its CLEC affiliate, Duo County has submitted nothing more than a certification asserting that it offers service in an attached list of census blocks.<sup>146</sup> The Commission has made clear that “all filings in the challenge process, whether from a price cap carrier or another provider, must be supported by some form of documented evidence.”<sup>147</sup> DuoCounty’s challenge amounts to a simple, unsupported certification, and thus should be rejected.

P. Flint Cable Television

Flint has submitted nothing more than a certification asserting that it “provides or can provide within 7-10 days” broadband service in an attached list of census blocks.<sup>148</sup> The Commission has made clear that “all filings in the challenge process, whether from a price cap carrier or another provider, must be supported by some form of documented evidence.”<sup>149</sup> Flint’s certification is not so supported, so its challenge should be rejected.

In addition, to the extent that Flint states that it “can provide [service] within 7-10 days,” it is not fulfilling its burden of demonstrating that the census block “is in fact served,”<sup>150</sup> as

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<sup>145</sup> See, e.g., March 18 Public Notice.

<sup>146</sup> See Letter from Thomas E. Preston, Chief Executive Officer, Cumberland Cellular, Inc. d/b/a Duo County Telecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 27, 2013).

<sup>147</sup> CAF Phase I Order at ¶ 33.

<sup>148</sup> See Flint Challenge.

<sup>149</sup> CAF Phase I Order at ¶ 33.

<sup>150</sup> *Id.* at ¶ 32.

required by the Commission. The objective of CAF Phase I is to provide service to locations that are “currently unserved” by robust fixed broadband.<sup>151</sup> “Can provide within 7-10 days” is not synonymous with “served,” and the fact that a location can be served by a competitor does not mean that the competitor serves the area or offers service in the area or even that the potential customer could receive such service upon request. Flint does not define what it means by “can provide [service] within 7-10 days”—for example, what facilities are already built out to the locations, or whether the potential customer would be required to pay a substantial fee to gain service.

Q. Hart Telephone Company and Hart Cable

Hart asserts that it serves, as a cable competitor, 11 census blocks elected by Windstream. However, its challenge should be rejected because it provides no documented evidence of 3/768 service in these census blocks. Hart attaches one customer bill for each census block; however, in only three of those—132579704001010, 132579704001013, and 132579704001119—does the bill show internet service, and even on those Hart does not specify that the service is 3/768 or above.<sup>152</sup> Hart also attaches what are apparently unaltered census block maps that shed no light on Hart’s facilities or service areas, and six maps that appear to be of streets but do not include keys explaining what they are showing or census block numbers so they can be connected to actual challenged census blocks.<sup>153</sup>

Hart also asserts that it, as an incumbent, serves 16 census blocks elected by Windstream. In certain areas, Windstream and Hart are adjacent ILECs, and these census blocks are divided

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<sup>151</sup> See Comprehensive Reform Order at ¶ 137.

<sup>152</sup> See Attachment C to Hart Challenge.

<sup>153</sup> See *id.*

between Windstream’s and Hart’s ILEC service areas. As the Bureau noted in a Public Notice prior to the challenge deadline, “the Phase I challenge process is focused solely on areas within the price cap carrier’s territory,” and “there is no need for rate of return incumbent carriers to participate in the challenge process merely to confirm they serve the portion of the census block within their study areas.”<sup>154</sup> Windstream intends to serve locations only in its own territory with CAF Phase I support, and to the extent Hart is filing to protect its ILEC service area, its “challenge” should be dismissed.

If Hart’s filing demonstrates a study area boundary disagreement, such disagreements should be addressed through the Commission’s separate effort to gather study area boundary data and resolve any gaps and overlaps, and should not serve to exclude areas in this process.<sup>155</sup>

R. Hill Country Telecommunications, LLC (HCT)

HCT, a CLEC affiliate of the below-referenced rate-of-return RLEC, offers no valid “documented evidence” to support its certification, as required by the Commission,<sup>156</sup> and its challenge should be rejected.

The only “evidence” offered by HCT is a vague map purportedly setting out the company’s territory.<sup>157</sup> It does not include any evidence of HCT’s network or customer locations. To the extent these maps informed HCT’s National Broadband Map data, HCT is making an entirely circular argument. The whole purpose of this challenge process is to

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<sup>154</sup> Sept. 14 Public Notice.

<sup>155</sup> *See, e.g.*, March 18 Public Notice.

<sup>156</sup> CAF Phase I Order at ¶ 33.

<sup>157</sup> *See* Attachment B to Letter from Delbert Wilson, CEO, Hill Country Telecommunications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 25, 2013).

determine, based on other evidence, whether the National Broadband Map designation is correct. HCT provides no other evidence, so its challenge should be dismissed.

S. Hill Country Telephone Cooperative (HCTC)

HCTC, whose service territory is adjacent to Windstream's, "challenges" with respect to 13 census blocks that are bisected by the boundary between the two companies' study areas.<sup>158</sup> As the Bureau noted in a Public Notice prior to the challenge deadline, "the Phase I challenge process is focused solely on areas within the price cap carrier's territory," and "there is no need for rate of return incumbent carriers to participate in the challenge process merely to confirm they serve the portion of the census block within their study areas."<sup>159</sup> Windstream intends to serve locations only in its own territory with CAF Phase I support, and because HCTC is filing to protect its ILEC service area, its "challenge" should be dismissed.

If HCTC's filing demonstrates a study area boundary disagreement, such disagreements should be addressed through the Commission's separate effort to gather study area boundary data and resolve any gaps and overlaps, and should not serve to exclude areas in this process.<sup>160</sup>

T. Huxley Communications Cooperative

Huxley offers a certification but notably does not certify, as requested by the Commission,<sup>161</sup> that it offers 3/768 service in all of relevant census blocks.<sup>162</sup> In addition,

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<sup>158</sup> See HCTC Challenge.

<sup>159</sup> Sept. 14 Public Notice.

<sup>160</sup> See, e.g., March 18 Public Notice.

<sup>161</sup> See CAF Phase I Order at ¶ 33.

<sup>162</sup> See Affidavit of Gary Clark, General Manager, attached to Comments of Huxley Communications Cooperative, WC Docket No. 10-90 (Sept. 25, 2013) (Huxley Challenge).

Huxley's challenge should be rejected because it lacks "documented evidence" that Huxley is offering 3/768 or better service in the relevant census blocks, as required by the Commission.<sup>163</sup>

Huxley includes a screen capture of its general website offering of fixed wireless service with "download speeds up to 8 Mbps."<sup>164</sup> The page does not note upload speed, and it also notes that Huxley "will do a free on site evaluation to determine feasibility of providing service to your location,"<sup>165</sup> thus indicating that it does not provide robust service to all of its purported service areas. Therefore, this screen capture is not probative of whether Huxley offers the requisite service in the census blocks Huxley challenges.

Huxley also includes a few customer bills, but they do not list the level of service provided.<sup>166</sup> Thus, Huxley has not supported its certification with valid "documented evidence," as required by the Commission,<sup>167</sup> and its challenge should be dismissed.

#### U. JAB Wireless, Inc.

JAB has offered a declaration by its Chief Development Officer and Director;<sup>168</sup> it is unclear whether the certifying party is an officer of the company, as clearly requested by the Commission.<sup>169</sup> It is questionable that JAB would not have provided a certification by a person who is clearly an officer or attested to that fact, and it raises doubt as to the accuracy of JAB's submission.

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<sup>163</sup> CAF Phase I Order at ¶ 33.

<sup>164</sup> See Attachment B to Huxley Challenge.

<sup>165</sup> See Huxley Communications, Residential Services, Fixed Wireless Internet, available at [http://www.huxcomm.net/residential/fixed\\_wifi.php](http://www.huxcomm.net/residential/fixed_wifi.php) (last visited Oct. 29, 2013).

<sup>166</sup> See Appendix C to Huxley Challenge.

<sup>167</sup> See CAF Phase I Order at ¶ 33.

<sup>168</sup> See Declaration of Jeff Kohler, Chief Development Officer and Director, JAB Wireless, Inc., attached to JAB Challenge.

<sup>169</sup> See CAF Phase I Order at ¶ 33.

JAB has also submitted a list of customers for each challenged census block,<sup>170</sup> but part of the addresses of the customers have been redacted, so Windstream is not able to perform any independent check or verification. The Commission in the *CAF Phase I Order* specified that “public disclosure is generally preferred, especially when the use of public funds is at issue.”<sup>171</sup> In addition, the National Cable and Telecommunications Association has emphasized the need for “transparency” in the CAF Phase I process,<sup>172</sup> and noted that such transparency would facilitate the prompt resolution of challenges.<sup>173</sup> This is equally true in the context of all documents filed in the challenge process.

Moreover, the foundation of this list of addresses is unclear, because JAB has not provided billing records to support its contentions of service.

#### V. Mediacom Communications Corporation

Mediacom has offered a declaration by a Group Vice President of Legal and Public Affairs;<sup>174</sup> it is unclear whether the certifying party is an officer of the company, as clearly requested by the Commission. It is questionable why Mediacom would not have provided a certification by a person who is clearly an officer or attested to that fact, and it raises doubt as to the accuracy of Mediacom’s submission.

The entire substance of Mediacom’s analysis apparently is a comparison between all the census blocks elected by price cap carriers against Mediacom’s own maps of its territory.<sup>175</sup>

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<sup>170</sup> See Exhibits A and B to JAB Challenge.

<sup>171</sup> CAF Phase I Order at ¶ 27.

<sup>172</sup> See, e.g., NCTA Reply Comments at 7.

<sup>173</sup> See *id.* at 8.

<sup>174</sup> See Declaration of Thomas J. Larsen, attached to Mediacom Challenge.

<sup>175</sup> See *id.*

There is no explanation as to how these maps were derived; they could simply be maps of Mediacom’s franchise territories without regard to the degree to which Mediacom has actually built out to the edges of such territories, particularly given the housing density exceptions commonly found in cable franchise agreements.<sup>176</sup> To the extent these maps informed Mediacom’s National Broadband Map data, Mediacom is making an entirely circular argument. The whole purpose of this challenge process is to determine, based on *other* evidence, whether the National Broadband Map designation is correct.<sup>177</sup>

Mediacom also provides a list of census block lists with a number of “serviceable homes” for each,<sup>178</sup> and thus is not fulfilling its burden of demonstrating that the census block “is in fact served,”<sup>179</sup> as required by the Commission. The objective of CAF Phase I is to provide service to locations that are “currently unserved” by robust fixed broadband.<sup>180</sup> “Serviceable” is not synonymous with “served,” and the fact that a location is “serviceable” by a competitor does not mean that the competitor serves the area or offers service in the area or even that the potential customer could receive such service upon request. Mediacom does not define what it means by serviceable—for example, what facilities are already built out to the locations, whether the potential customer would be required to pay a substantial fee to gain service, or in what timeframe such a customer would be able to receive service.

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<sup>176</sup> If such maps are, indeed, derived on such a basis, they would be about as probative as a CMRS carrier representing its coverage on a map by filling in the entirety of each county comprising its license areas.

<sup>177</sup> See CAF Phase I Order at ¶ 33 (noting that Bureau must determine, based on “documented evidence,” whether it is “more likely than not that the status of a census block should be treated differently than the status shown on the National Broadband Map”).

<sup>178</sup> Exhibit A to Mediacom Challenge.

<sup>179</sup> CAF Phase I Order at ¶ 32.

<sup>180</sup> See Comprehensive Reform Order at ¶ 137.

Moreover, in a substantial number of the census blocks, Mediacom states it has only one “serviceable” address, which raises significant doubt about whether Mediacom actually can serve or is offering service in the census block and whether the block should be excluded from CAF Phase I eligibility. For example, Windstream seeks to provide 3/768 service to 41 locations in census block number 130279604001003; Mediacom claims to have one “serviceable address” in the census block and does not state, let alone offer documented evidence, that it provides or offers service in the census block. As a result, at least 41 locations would be denied the opportunity to receive robust broadband service at 4/768 or fast speeds because Mediacom considers one location in the block “serviceable.”

In sum, Mediacom offers insufficient “documented evidence,” as required by the Commission,<sup>181</sup> and its challenge should be rejected.

#### W. Muenster Telephone Corporation of Texas

Muenster has submitted nothing more than a certification asserting that it offers service in an attached list of census blocks.<sup>182</sup> The Commission has made clear that “all filings in the challenge process, whether from a price cap carrier or another provider, must be supported by some form of documented evidence.”<sup>183</sup> Muenster’s certification is not so supported, so its challenge should be rejected.

Moreover, to the extent Muenster is filing with respect to its ILEC service areas (this is not clear from the filing), Windstream notes that the Bureau pointed out in a Public Notice prior

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<sup>181</sup> CAF Phase I Order at ¶ 33.

<sup>182</sup> Certification of Alan Rohmer, Chief Financial Officer of Muenster Telephone Corporation of Texas, attached to Letter from Gail Odell, Authorized Representative for Muenster Telephone Corporation of Texas, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 27, 2013).

<sup>183</sup> CAF Phase I Order at ¶ 33.

to the challenge deadline that “the Phase I challenge process is focused solely on areas within the price cap carrier’s territory,” and “there is no need for rate of return incumbent carriers to participate in the challenge process merely to confirm they serve the portion of the census block within their study areas.”<sup>184</sup> Windstream intends to serve locations only in its own territory with CAF Phase I support, and to the extent Muenster is filing to protect its ILEC service area, its “challenge” should be dismissed.

X. Northland Communications

Northland’s challenge should be rejected because it lacks “documented evidence,” as required by the Commission.<sup>185</sup>

Northland challenges as to 16 census blocks, but in eight of those it says it lacks a customer but is “capable of providing broadband services.”<sup>186</sup> Northland thus is not fulfilling its burden of demonstrating that the census block “is in fact served,”<sup>187</sup> as required by the Commission. The objective of CAF Phase I is to provide service to locations that are “currently unserved” by robust fixed broadband.<sup>188</sup> “Capable of providing service” is not synonymous with “served,” and the fact that a competitor is “capable of providing service” in a location does not mean that the competitor serves the area or offers service in the area or even that the potential customer could receive such service upon request. Northland does not define what it means by “capable of providing service”—for example, what facilities are already built out to the locations, whether the potential customer would be required to pay a substantial fee to gain

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<sup>184</sup> Sept. 14 Public Notice.

<sup>185</sup> CAF Phase I Order at ¶ 33.

<sup>186</sup> See Attachment 1 to Northland Challenge.

<sup>187</sup> CAF Phase I Order at ¶ 33.

<sup>188</sup> See Comprehensive Reform Order at ¶ 137.

service, in what timeframe such a customer would be able to receive service, and how robust the service would be.

The only substantive evidence offered by Northland is 13 apparent copies of bills, but from what Windstream can see, none specifies that Northland is offering or the customer is taking broadband at speeds of at least 3/768. In some, the service offerings are completely redacted.

Y. North Star Telephone Companies

North State, whose service territory is adjacent to Windstream's, "challenges" with respect to one census block that apparently is bisected by the boundary between the two companies' study areas.<sup>189</sup> As the Bureau noted in a Public Notice prior to the challenge deadline, "the Phase I challenge process is focused solely on areas within the price cap carrier's territory," and "there is no need for rate of return incumbent carriers to participate in the challenge process merely to confirm they serve the portion of the census block within their study areas."<sup>190</sup> Windstream intends to serve locations only in its own territory with CAF Phase I support, and because North State is filing to protect its ILEC service area, its "challenge" should be dismissed.

To the extent North State's filing demonstrates a study area boundary disagreement, such disagreements should be addressed through the Commission's separate effort to gather study area boundary data and resolve any gaps and overlaps, and should not serve to exclude areas in this process.<sup>191</sup>

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<sup>189</sup> See North State Challenge.

<sup>190</sup> Sept. 14 Public Notice.

<sup>191</sup> See, e.g., March 18 Public Notice.

Z. Panhandle Telephone Cooperative

Panhandle’s challenge should be rejected because it lacks “documented evidence,” as required by the Commission.<sup>192</sup>

Panhandle states that its analysis consisted of comparing the information in Windstream’s filing to “its own broadband service coverage data.”<sup>193</sup> To the extent this self-generated data has informed Panhandle’s National Broadband Map data, Panhandle is making an entirely circular argument. The whole purpose of this challenge process is to determine, based on *other* evidence, whether the National Broadband Map designation is correct.<sup>194</sup>

In terms of other evidence, Panhandle provides a single customer bill, despite the fact that it challenges 30 census blocks.<sup>195</sup> Even for this single bill, the address is redacted so neither the Commission nor Windstream can tie it to a given census block or otherwise verify or review it.

This single bill does not constitute “documented evidence” to support Panhandle’s challenge, so the challenge should be dismissed.

AA. Planters Communications, LLC

Planters, a CLEC affiliate of the below-referenced rate-of-return RLEC, provides a certification that it “provides or can provide within 7-10 days broadband service at or above 3 Mbps download, 768 kbps upload in the census blocks identified on the attached list.”<sup>196</sup> To the extent that Planters is certifying that it “can provide” service in any census blocks, it is not

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<sup>192</sup> CAF Phase I Order at ¶ 33.

<sup>193</sup> See Panhandle Challenge at 1-2.

<sup>194</sup> See CAF Phase I Order at ¶ 33 (noting that Bureau must determine, based on “documented evidence,” whether it is “more likely than not that the status of a census block should be treated differently than the status shown on the National Broadband Map”).

<sup>195</sup> See Exhibit C to Panhandle Challenge.

<sup>196</sup> See Planters Challenge.

fulfilling its burden of demonstrating that the census block “is in fact served,”<sup>197</sup> as required by the Commission. The objective of CAF Phase I is to provide service to locations that are “currently unserved” by robust fixed broadband.<sup>198</sup> “Can provide within 7-10 days” is not synonymous with “served,” and the fact that a location can be served by a competitor does not mean that the competitor serves the area or offers service in the area or even that the potential customer could receive such service upon request. Planters does not define what it means by “can provide [service] within 7-10 days”—for example, what facilities are already built out to the locations, or whether the potential customer would be required to pay a substantial fee to gain service.

Moreover, Planters offers no valid “documented evidence” to support its certification, as required by the Commission,<sup>199</sup> and its challenge should be rejected.

The only “evidence” offered by Planters are vague maps purportedly setting out the company’s network facilities.<sup>200</sup> There are apparently a few locations on one of the maps, but it is not clear what these locations are or whether Planters can serve them. Planters does not offer any other evidence, such as billing records, customer addresses, etc., to show it provides or offers 3/768 service to any locations in these census blocks.

BB. Planters Rural Telephone Cooperative, Inc.

Planters is an RLEC whose territory is adjacent to that of Windstream, and is apparently filing to protect what it considers to be its ILEC territory.<sup>201</sup> As the Bureau noted in a Public

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<sup>197</sup> CAF Phase I Order at ¶ 32.

<sup>198</sup> See Comprehensive Reform Order at ¶ 137.

<sup>199</sup> CAF Phase I Order at ¶ 33.

<sup>200</sup> See Attachment B to Planters Challenge.

<sup>201</sup> See Planters RTC Challenge.

Notice prior to the challenge deadline, “the Phase I challenge process is focused solely on areas within the price cap carrier’s territory,” and “there is no need for rate of return incumbent carriers to participate in the challenge process merely to confirm they serve the portion of the census block within their study areas.”<sup>202</sup> Windstream intends to serve locations only in its own territory with CAF Phase I support, and because Planters is filing to protect its ILEC service area, its “challenge” should be dismissed. To the extent that Planters’ filing demonstrates a study area boundary disagreement, such disagreements should be addressed through the Commission’s separate effort to gather study area boundary data and resolve any gaps and overlaps, and should not serve to exclude areas in this process.<sup>203</sup>

CC. Public Service Wireless

Public Service has submitted nothing more than a certification asserting that it “provides or can provide within 7-10 days” service in an attached list of census blocks.<sup>204</sup> The Commission has made clear that “all filings in the challenge process, whether from a price cap carrier or another provider, must be supported by some form of documented evidence.”<sup>205</sup> Public Service’s certification is not so supported, so its challenge should be rejected.

Moreover, whether a provider “can provide [service] within 7-10 days” does not clarify whether the census block “is in fact served,”<sup>206</sup> as required by the Commission. The objective of CAF Phase I is to provide service to locations that are “currently unserved” by robust fixed

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<sup>202</sup> Sept. 14 Public Notice

<sup>203</sup> See, e.g., March 18 Public Notice.

<sup>204</sup> See Public Service Challenge.

<sup>205</sup> CAF Phase I Order at ¶ 33.

<sup>206</sup> *Id.* at ¶ 32.

broadband.<sup>207</sup> “Can provide within 7-10 days” is not synonymous with “served,” and the fact that a location can be served by a competitor does not mean that the competitor serves the area or offers service in the area or even that the potential customer could receive such service upon request. Public Service does not define what it means by “can provide [service] within 7-10 days”—for example, what facilities are already built out to the locations, or whether the potential customer would be required to pay a substantial fee to gain service.

DD. Santa Rosa Telephone Cooperative, Inc.

It is unclear the extent to which Santa Rosa is “challenging” with respect to its own ILEC territories as an adjacent RLEC, or whether it is really challenging based on its alleged overbuilding of Windstream’s ILEC territories.

To the extent Santa Rosa’s filing is the former, Windstream notes that the Bureau pointed out in a Public Notice prior to the challenge deadline that “the Phase I challenge process is focused solely on areas within the price cap carrier’s territory,” and “there is no need for rate of return incumbent carriers to participate in the challenge process merely to confirm they serve the portion of the census block within their study areas.”<sup>208</sup> Windstream intends to serve locations only in its own territory with CAF Phase I support, and because Santa Rosa is filing to protect its ILEC service area, its “challenge” should be dismissed. To the extent that Santa Rosa’s filing demonstrates any study area boundary disagreements, such disagreements should be addressed through the Commission’s separate effort to gather study area boundary data and resolve any gaps and overlaps, and should not serve to exclude areas in this process.<sup>209</sup>

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<sup>207</sup> See Comprehensive Reform Order at ¶ 137.

<sup>208</sup> Sept. 14 Public Notice.

<sup>209</sup> See, e.g., March 18 Public Notice.

To the extent Santa Rosa’s filing is intended to be an actual challenge, it should be dismissed as insufficient. Santa Rosa has submitted nothing more than a certification asserting that it offers service in an attached list of census blocks.<sup>210</sup> The Commission has made clear that “all filings in the challenge process, whether from a price cap carrier or another provider, must be supported by some form of documented evidence.”<sup>211</sup> Santa Rosa’s certification is not so supported, so its challenge should be rejected.

EE. SpeedConnect LLC

SpeedConnect’s challenge should be rejected because it lacks “documented evidence,” as required by the Commission.<sup>212</sup>

SpeedConnect essentially offers nothing more than a certification and a list of census blocks that it allegedly serves.<sup>213</sup> SpeedConnect’s certification never specifically says that it offers or provides at least 3/768 service in the listed census blocks; thus it should be rejected as insufficient.

SpeedConnect also includes an illegible map, including three states, that does not clearly pinpoint locations or census blocks in which SpeedConnect allegedly provides 3/768 service.<sup>214</sup>

Next, SpeedConnect allegedly includes a “cross-section” of a subscriber list.<sup>215</sup> The list is purported “to indicate the existence of such customers throughout SpeedConnect’s service

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<sup>210</sup> See Certification of Kirk Petty, General Manager, Santa Rosa Telephone Cooperative, Inc., attached to Letter from Gail Odell, Authorized Representative for Santa Rosa Telephone Cooperative, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No.1 0-90 (Sept. 27, 2013).

<sup>211</sup> CAF Phase I Order at ¶ 33.

<sup>212</sup> *Id.*

<sup>213</sup> See Letter from John Ogren, CEO, SpeedConnect LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 27, 2013) (SpeedConnect Challenge).

<sup>214</sup> See Exhibit B to SpeedConnect Challenge.

area,” but does not apparently connect alleged subscribers with challenged census blocks.

Windstream doesn’t really know for sure, however, because the attachment is entirely redacted, so Windstream is not able to perform any independent check or verification. The Commission in the *CAF Phase I Order* specified that “public disclosure is generally preferred, especially when the use of public funds is at issue.”<sup>216</sup> In addition, the National Cable and Telecommunications Association has emphasized the need for “transparency” in the CAF Phase I process,<sup>217</sup> and noted that such transparency would facilitate the prompt resolution of challenges.<sup>218</sup> This is equally true in the context of all documents filed in the challenge process.

Finally, SpeedConnect includes a price sheet, but provides no evidence that such price sheet, or the service indicated, is available in the contested census blocks.<sup>219</sup>

FF. Suddenlink Communications

Suddenlink has offered a certification by a Vice President – Government Relations and Senior Counsel;<sup>220</sup> it is unclear whether the certifying party is an officer of the company, as clearly requested by the Commission.<sup>221</sup> It is questionable why Suddenlink would not have provided a certification by a person who is clearly an officer or attested to that fact, and it raises doubt as to the accuracy of Suddenlink’s submission.

Other than the certification, Suddenlink apparently includes a list of customer addresses or “serviceable home addresses.” Suddenlink does not explain the methodology by which it

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<sup>215</sup> See Exhibit C to SpeedConnect Challenge.

<sup>216</sup> CAF Phase I Order at ¶ 27.

<sup>217</sup> See, e.g., NCTA Reply Comments at 7.

<sup>218</sup> See *id.* at 8.

<sup>219</sup> Exhibit D to SpeedConnect Challenge.

<sup>220</sup> See Zarrilli Certification.

<sup>221</sup> See CAF Phase I Order at ¶ 33.

derived these addresses or clarify which of the census blocks have actual customers, so it is unclear how or whether these addresses support its certification. Moreover, it has redacted the addresses so Windstream is not able to perform any independent check or verification. The Commission in the *CAF Phase I Order* specified that “public disclosure is generally preferred, especially when the use of public funds is at issue.”<sup>222</sup> In addition, the National Cable and Telecommunications Association, of which Suddenlink is a member, has emphasized the need for “transparency” in the CAF Phase I process,<sup>223</sup> and noted that such transparency would facilitate the prompt resolution of challenges.<sup>224</sup> This is equally true in the context of all documents filed in the challenge process.

Furthermore, the fact that an address may be “serviceable” does not clarify whether the census block “is in fact served,”<sup>225</sup> as required by the Commission. The objective of CAF Phase I is to provide service in locations that are “currently unserved” by robust fixed broadband.<sup>226</sup> “Serviceable” is not synonymous with “served,” and the fact that a location can be served by a competitor does not mean that the competitor actually serves the area or offers service in the area or even that the potential customer could receive such service upon request. Suddenlink does not define what it means by “serviceable”—for example, whether the potential customer would be required to pay a substantial fee to gain service, or in what timeframe such a customer would be able to receive service.

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<sup>222</sup> *Id.* at ¶ 27.

<sup>223</sup> *See, e.g.*, NCTA Reply Comments at 7.

<sup>224</sup> *See id.* at 8.

<sup>225</sup> CAF Phase I Order at ¶ 32.

<sup>226</sup> *See* Comprehensive Reform Order at ¶ 137.

In sum, Suddenlink offers no valid “documented evidence” to support its certification, as required by the Commission,<sup>227</sup> and its challenge should be rejected.

GG. TDS Baja Broadband LLC (Baja)

TDS, on behalf of Baja, offers a certification from a Vice President of Cable Operations;<sup>228</sup> it is unclear whether the certifying party is an officer of the company, as clearly requested by the Commission.<sup>229</sup> Moreover, the certification is not offered under penalty of perjury, as clearly requested by the Commission. The fact that TDS did not conform to the clear instructions of the Commission raises doubt as to the accuracy of its submission, and the certification should be rejected as insufficient.

Moreover, for many challenged census blocks, TDS offers evidence only of “serviceable” locations.<sup>230</sup> The fact that a location may be “serviceable” is not probative of whether the census block “is in fact served,”<sup>231</sup> as required by the Commission. The objective of CAF Phase I is to provide service to locations that are “currently unserved” by robust fixed broadband.<sup>232</sup> “Serviceable” is not synonymous with “served,” and the fact that a location can be served by a competitor does not mean that the competitor serves the area or offers service in the area or even that the potential customer could receive such service upon request. TDS does not define what it means by “serviceable”—for example, what facilities are already built out to the locations, or whether the potential customer would be required to pay a substantial fee to gain service.

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<sup>227</sup> CAF Phase I Order at ¶ 33.

<sup>228</sup> See TDS Challenge.

<sup>229</sup> See CAF Phase I Order at ¶ 33.

<sup>230</sup> See Attachment A to TDS Challenge.

<sup>231</sup> See CAF Phase I Order at ¶ 32.

<sup>232</sup> See Comprehensive Reform Order at ¶ 137.

Thus, TDS offers no valid “documented evidence” to support its certification, as required by the Commission,<sup>233</sup> and its challenge should be rejected.

HH. Texas Communications of Bryan, Inc.

Texas Communications offers no valid “documented evidence” to support its certification, as required by the Commission,<sup>234</sup> and its challenge should be rejected.

Texas Communications, a wireless internet service provider, submits a generic coverage map that does not include any explanation of where its facilities are and how it allegedly delivers at least 3/768 service in the relevant census blocks, which are near the edge of its service circles.<sup>235</sup> Moreover, to the extent this map informed Texas Communications’ National Broadband Map data, Texas Communications is making an entirely circular argument. The whole purpose of this challenge process is to determine, based on *other* evidence, whether the National Broadband Map designation is correct.<sup>236</sup>

The only other evidence offered by Texas Communications are three screenshots apparently taken from its billing software.<sup>237</sup> These screenshots do not indicate the census blocks to which they relate (Texas Communications is challenging 29 census blocks), nor do the bills indicate that the customers are taking broadband service, let alone broadband service at

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<sup>233</sup> CAF Phase I Order at ¶ 33.

<sup>234</sup> *Id.*

<sup>235</sup> See Attachment 3 to Letter from Bryan S. Sewell, Texas Communications of Bryan, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 25, 2013) (Texas Bryan Challenge).

<sup>236</sup> See CAF Phase I Order at ¶ 33 (noting that Bureau must determine, based on “documented evidence,” whether it is “more likely than not that the status of a census block should be treated differently than the status shown on the National Broadband Map”).

<sup>237</sup> See Attachment 4 to Texas Bryan Challenge.

speeds of at least 3/768. Thus, these bills are not valid evidence to support Texas Communications' certification.

## II. Texas Communications of San Angelo

Texas Communications' challenge should be rejected because it entirely lacks a certification under penalty of perjury and any documented evidence.<sup>238</sup>

First, Texas Communications does not state which census blocks it is challenging.<sup>239</sup> It lists only a census tract, which encompasses 26 census blocks that Windstream has elected, none of which is marked as being served by Texas Communications on the applicable version of the National Broadband Map (and 21 of which are shown as entirely unserved by any provider on the Map). Texas Communications also attaches a general advertisement, which lists the availability of 3/1 service at \$99.00 a month but does not clarify that such service is available in any particular challenged census block.<sup>240</sup> Finally, Texas Communications attaches a single bill, but the address is redacted so Windstream can neither verify it nor link it with a particular census block.<sup>241</sup>

In sum, Texas Communications' submission is wholly insufficient to override Windstream's election or the classification of any census blocks in tract number 48081950100 as unserved on the National Broadband Map.

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<sup>238</sup> See CAF Phase I Order at ¶ 33.

<sup>239</sup> See Letter from Buz Wojtek, VP Operations, Texas Communications of San Angelo, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Sept. 25, 2013) (Texas San Angelo Challenge).

<sup>240</sup> See Attachment to Texas San Angelo Challenge.

<sup>241</sup> See *id.*

JJ. Time Warner Cable

TWC has offered a certification by a Group Vice President and Chief Counsel, Regulatory;<sup>242</sup> it is unclear whether the certifying party is an officer of the company, as clearly requested by the Commission. It is questionable why TWC would not have provided a certification by a person who is clearly an officer or attested to that fact, and it raises doubt as to the accuracy of TWC's submission.

In addition, TWC's certification does not state explicitly that it offers or provides the requisite service in all of the relevant census blocks, though the Commission specifically noted that "the Bureau may consider such evidence as a signed certification from an officer of the provider under penalty of perjury that it offers 3 Mbps/768 kbps Internet service to customers in that particular census block."<sup>243</sup> TWC does state it "is capable of providing" such service,<sup>244</sup> albeit perhaps after collecting exorbitant line extension charges and imposing indefinite installation intervals, and it is uncertain whether it actually offers such service in the census blocks at issue. Again, it is unclear why TWC would not provide a certification that adheres to the recommendations set forth by the Commission, and TWC's certification should be rejected as insufficient.

Perhaps TWC's certification is as circumspect as it is because any clear assertion that it offers or provides service in the challenged census blocks would be called into question by information publicly available on TWC's own website. Attachment 3 to this document is a list of 13 United States Postal Service-certified addresses, categorized by census block, which

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<sup>242</sup> See Laine Certification.

<sup>243</sup> CAF Phase I Order at ¶ 33.

<sup>244</sup> See Laine Certification.

represents all of the USPS-certified addresses in Windstream’s service area in 2 listed census blocks that TWC has challenged.<sup>245</sup> All of these addresses were entered into TWC’s online service qualification tool between October 20 and November 1, 2013, and produced on-screen responses stating that “Time Warner Cable does not service the address,” or some other comparable text.<sup>246</sup> Therefore, with respect to these 2 census blocks, encompassing 13 USPS-certified addresses, TWC’s own website tool states that no broadband service is available at even a single USPS address in Windstream’s service territory.<sup>247</sup> In addition, in 115 census blocks, encompassing 2,260 USPS addresses, Time Warner Cable’s online qualification tool provided for each address an inconclusive statement such as “We are unable to process an online order for the address provided. Please contact us so we can assist you.”<sup>248</sup> Thus, Time Warner’s own website does not make clear that it provides 3/768 broadband service to a single address in these CBs. In light of this finding, TWC’s entire challenge should be rejected.

Otherwise, TWC offers only lists of census blocks.<sup>249</sup> With respect to certain of these census blocks, TWC does not and has not provided service but states that such blocks are “serviceable based on Frontier GeoTek’s detailed assessment of TWC’s network.” The fact that a census block may be “serviceable” does not clarify whether the census block “is in fact served,” as required by the Commission to exclude a census block from CAF Phase I eligibility.<sup>250</sup> The objective of CAF Phase I is to provide service to locations that are “currently

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<sup>245</sup> Raper Declaration at ¶ 7-8.

<sup>246</sup> *See id.* Screen shots that show examples of these responses for each of the four providers are attached to the Raper Declaration.

<sup>247</sup> *See id.* at ¶ 8. *See also* Attachment 3.

<sup>248</sup> *See id.* at ¶ 9. *See also* Attachment 4.

<sup>249</sup> *See* Attachments 1 and 2 to Time Warner Cable Challenge.

<sup>250</sup> *See* CAF Phase I Order at ¶ 132.

unserved” by robust fixed broadband.<sup>251</sup> “Serviceable” is not synonymous with “served,” and the fact that a census block can be served by a competitor does not mean that the competitor serves the area or offers service in the area or even that a customer in the area could receive service upon request. Moreover, TWC does not define what it means by serviceable—for example, whether the potential customer would be required to pay a substantial fee to gain service, or in what timeframe such a customer would be able to receive service.

TWC claims that it has “customer count and address data” with respect to some of the challenged census blocks based on billing records; however, it does not provide any of those records or that information. Thus TWC’s challenge should be denied because it is not “supported by some form of documented evidence,” as the Commission requires.<sup>252</sup>

In addition, because TWC says it will not readily provide any of the information it claims to possess,<sup>253</sup> Windstream is not able to perform any independent check or verification. The Commission in the *CAF Phase I Order* specified that “public disclosure is generally preferred, especially when the use of public funds is at issue.”<sup>254</sup> In addition, the National Cable and Telecommunications Association, of which TWC is a major member, has emphasized the need for “transparency” in the CAF Phase I process,<sup>255</sup> and noted that such transparency would facilitate the prompt resolution of challenges.<sup>256</sup> This is equally true in the context of all documents filed in the challenge process.

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<sup>251</sup> See Comprehensive Reform Order at ¶ 137.

<sup>252</sup> See CAF Phase I Order at ¶ 33.

<sup>253</sup> See Time Warner Cable Challenge at 5.

<sup>254</sup> CAF Phase I Order at ¶ 27.

<sup>255</sup> See, e.g., NCTA Reply Comments at 7.

<sup>256</sup> See *id.* at 8.

KK. TruVista Communications of Georgia, LLC

Rather than a certification that it offers service in a given set of census blocks, supported by documented evidence, TruVista has offered rather baffling evidence, with a certification defending its accuracy.<sup>257</sup>

First, TruVista has purported to offer “service area maps . . . with census block later showing that TruVista already has in place facilities capable of providing broadband service to the challenged census blocks at a download speed of at least 15 Mbps and an upload speed of at least 2 Mbps.” There are two documents attached that appear to be maps. However, these maps do not contain a key or any explanation of what they are illustrating, and do not clearly mark the 82 census blocks that TruVista is apparently challenging. Thus, these maps cannot be considered valid evidence in support of a challenge.

Second, TruVista has purported to offer a “list showing the challenged census block of each active customer, the speed to which the customer subscribes and the maximum speeds available in the block.” However, this list does not include addresses that link the customers to a given census block, and indeed on several entries there are listed two or three different census blocks, with no explanation given as to how a single customer could reside in several different census blocks.

In sum, TruVista has offered no valid documented evidence that it offers service in the challenged census blocks.<sup>258</sup> Therefore, its challenge should be dismissed.

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<sup>257</sup> See Letter from Thomas T. Harper, Vice President – Administration & Regulatory Affairs, TruVista, to FCC, WC Docket No. 10-90 (Sept. 27, 2013).

<sup>258</sup> CAF Phase I Order at ¶ 33.

LL. W.A.T.C.H. TV Co.

Watch offers no valid “documented evidence” to support its certification, as required by the Commission,<sup>259</sup> and its challenge should be rejected.

Watch challenges with respect to 43 census blocks. However, it admits that in none of these census blocks does it have a customer taking a 3/768 service.<sup>260</sup> This is likely because Watch’s own general advertising submitted with its challenge notes that its service of “up to 3 Mbps down” (no upload speed listed) costs at least \$84.99 per month.<sup>261</sup> Watch also offers customer bills, but as Watch itself notes, none of these bills is for a 3/768 service.<sup>262</sup> Further, Watch makes no assertions regarding the number of 3/768 customers that it could actually support – while the offering may be hypothetically available, it may not be practically available. It may be that two dozen customers scattered in merely ten of these Census Blocks would overload Watch’s network. Thus, Watch provides no documented evidence that it offers 3/768 service in the particular census blocks at issue.

MM. Winnebago Cooperative Telephone Association

It is unclear the extent to which Winnebago is “challenging” with respect to its own ILEC territories as an adjacent RLEC, or whether it is really challenging based on its alleged overbuilding of Windstream’s ILEC territories in the pertinent census blocks.

To the extent Winnebago’s filing is the former, Windstream notes that the Bureau pointed out in a Public Notice prior to the challenge deadline that “the Phase I challenge process is

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<sup>259</sup> *Id.*

<sup>260</sup> See Letter from Thomas N. Knippen, Vice President and General Manager, W.A.T.C.H. TV Co./Watch Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (undated) (Watch Challenge).

<sup>261</sup> See Attachment to Watch Challenge.

<sup>262</sup> See *id.*

focused solely on areas within the price cap carrier’s territory,” and “there is no need for rate of return incumbent carriers to participate in the challenge process merely to confirm they serve the portion of the census block within their study areas.”<sup>263</sup> Windstream intends to serve locations only in its own territory with CAF Phase I support, and because Winnebago is filing to protect its ILEC service area, its “challenge” should be dismissed. To the extent that Winnebago’s filing demonstrates any study area boundary disagreements, such disagreements should be addressed through the Commission’s separate effort to gather study area boundary data and resolve any gaps and overlaps, and should not serve to exclude areas in this process.<sup>264</sup>

To the extent Winnebago’s filing is intended to be an actual challenge, it should be dismissed as insufficient. Winnebago has submitted nothing more than a certification asserting that it offers service in an attached list of census blocks.<sup>265</sup> The Commission has made clear that “all filings in the challenge process, whether from a price cap carrier or another provider, must be supported by some form of documented evidence.” Winnebago’s certification is not so supported, so its challenge should be rejected.

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<sup>263</sup> Sept. 14 Public Notice.

<sup>264</sup> *See, e.g.*, March 18 Public Notice.

<sup>265</sup> *See* Certification of Mark Thoma, General Manager, Winnebago Cooperative Telecom Assn.

## CONCLUSION

Windstream respectfully requests that the Commission release funding for the 18,808 of its elected census blocks that were unopposed by any provider claiming to offer service in the relevant census blocks. Moreover, as Windstream demonstrated above, the vast majority of challengers failed to demonstrate that the challenged census blocks are “in fact served by” robust broadband, and their challenges should be rejected and funding for the challenged census blocks awarded to Windstream.

Respectfully submitted,

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