Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

COMMENTS OF WINDSTREAM CORPORATION

Windstream Corporation, on behalf of its incumbent local exchange carrier ("ILEC") affiliates (hereinafter "Windstream"), submits the following comments on the Further Notice of Proposed Rulemaking ("*FNPRM*") in the above-referenced dockets.[1] Windstream has long supported rational reforms to transition the legacy high-cost universal service program to the Connect America Fund ("CAF"), and we are pleased that the Commission is taking steps to move forward within the framework it adopted in 2011. As the Commission has recognized, the legacy rules created and perpetuate a "rural-rural divide" wherein certain high-cost areas have received generous support and have been served by advanced network facilities, while other

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1 *See* In the Matter of Connect America Fund (WC Docket No. 10-90), Universal Service Reform – Mobility Fund (WT Docket No. 10-208), ETC Annual Reports and Certifications (WC Docket No. 14-58), Establishing Just and Reasonable Rates for Local Exchange Carriers (WC Docket No. 07-135), Developing an Unified Intercarrier Compensation Regime (CC Docket No. 01-92), *Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking ("FNPRM")* (rel. June 10, 2014).

high-cost areas exhibiting comparable cost conditions have been virtually ignored.[2] A successful reform approach will both support existing broadband and voice services in high-cost areas and lay the groundwork for new and better broadband service in high-cost areas that have been neglected under the legacy regime. As the Commission sets out to update and resolve the open questions surrounding CAF Phase II, Windstream urges it to keep an unwavering focus on the provision of ubiquitous, robust broadband and voice services in high-cost areas, and to align support and obligations to advance this objective.

In particular, if the Commission increases the minimum broadband speed requirement for CAF Phase II to 10 Mbps downstream—a change that would increase significantly the cost of required network build-outs pursuant to the program—the Commission should extend the statewide commitment support term and build-out period to 10 years. In addition, the Commission should implement its proposed measures to provide CAF Phase II support recipients with greater flexibility to satisfy their deployment obligations. Furthermore, the Commission should apply the same usage allowances and latency benchmarks adopted for the state-wide commitment to ETCs that receive support through competitive bidding, and until comprehensive, accurate testing exists to verify that satellite and mobile technologies can deliver broadband that meets all of the CAF Phase II performance standards to all eligible locations within a given service area, the Commission should require that CAF Phase II support recipients satisfy their obligations using a fixed, terrestrial technology. Finally, because a key objective of the CAF is

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[2] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, CC Docket Nos. 01-92 and 96-45, WC Docket Nos. 10-90, 07-135, 05-337, and 03-109, GN Docket No. 09-51, and WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking at para. 7 (rel. November 18, 2011) ("*USF/ICC Transformation Order*").

"sustaining existing voice and broadband services,"[3] the Commission should not exclude from the CAF Phase II competitive bidding process areas where a price cap carrier already offers voice and broadband service.

I. ANY INCREASE IN THE CAF PHASE II SPEED REQUIREMENT SHOULD BE ACCOMPANIED BY AN INCREASE IN THE STATEWIDE COMMITMENT SUPPORT TERM AND NETWORK BUILD-OUT PERIOD.

As Windstream has noted consistently, the success of the CAF Phase II program depends on a reasonable alignment of support with obligations. The original parameters of the statewide commitment offer—five years of model-derived support in exchange for a commitment to serve all eligible locations with 4/1 Mbps broadband (and some percentage of locations with more robust broadband)—represented a deliberate balance of these considerations within the $1.8 billion annual budget for areas served by price cap areas. Windstream is not opposed to the Commission's proposal to increase the minimum broadband speed requirement for CAF Phase II to 10 Mbps downstream, as long as the Commission concomitantly increases the support term and build-out period for the statewide commitment to 10 years.

The deployment of high-bandwidth broadband in rural and high-cost areas involves driving fiber deeper into the network—a point Windstream has discussed at length previously and will not belabor here.[4] Constructing a network that will provide at least 10 Mbps broadband to all eligible locations in a given service area—in other words, a network that will provide 10 Mbps broadband to even the locations farthest from the DSLAM or remote terminal—requires more fiber deployment and remote terminals and enhanced middle mile networks than a

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[3] *USF/ICC Transformation Order* at ¶ 156.

[4] *See, e.g.*, Letter from Malena F. Barzilai, Senior Counsel, Government Affairs, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 and 05-337, at 2-3 (April 8, 2013).

network that will provide 4 Mbps at the outer edges.[5] In addition, an increased speed requirement and resulting increased fiber requirements will extend the necessary build-out timeline, as various CAF Phase II recipients will be seeking material and resources from the same, limited number of fiber manufacturers and installers.[6]

The Commission recognized the wisdom of a 10-year term of support in the competitive bidding process, noting the "increased investment participants may need to bring to the table to meet the higher speed benchmark we propose below." This rationale is no less true in the context of price cap ILECs facing a 10 Mbps broadband deployment requirement under a statewide commitment. In addition, even with 10 years of support, ILECs would only be recovering a fraction of the cost of the modeled deployment, because the Connect America Cost Model assumes a useful life of outside plant facilities of 25 years. Even with 10 years of support, the statewide commitment will not enrich price cap carriers; in fact, the offer likely will require careful consideration for Windstream and many carriers.

Essentially, Windstream views CAF Phase II as a three-legged stool, in which support amount, build-out rules and service obligations must be balanced precisely to support broadband deployment and maintenance in high-cost areas. If the Commission raises one leg of the stool—the service obligations—without increasing the support amount and making the build-out terms sufficiently reasonable, the stool will fall, to the detriment of rural consumers.

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[5] For example, it has been introduced in this proceeding that, according to a CostQuest-built Feeder Cost Estimation Tool based on the data in the CQBAT model, on which the current CAM is based, the required fiber feeder support per mile is $38,910, and necessary support for the associated electronics is $318 per location. *See* Comments of the United States Telecom Association, the Independent Telephone & Telecommunications Alliance, and the ABC Coalition, WC Docket No. 10-90, at 23 (Jan. 28, 2013).

[6] For these same reasons, the Commission should set a 10-year build-out term for recipients through the competitive bidding process as well.

II. THE COMMISSION SHOULD PROVIDE CAF PHASE II RECIPIENTS NECESSARY FLEXIBILITY TO FULFILL OBLIGATIONS.

The Commission should adopt its proposals to permit CAF Phase II recipients to specify that they are willing to deploy to less than 100 percent of locations in their funded areas, and to permit substitution of unserved locations within partially served census blocks for locations within funded census blocks.[7] Such flexibility encourages efficient network design and thus maximizes the "bang for the buck" of CAF Phase II dollars while advancing the Commission's goals of providing reasonably comparable broadband in all rural and high-cost areas.

With regard to the first flexibility measure, CAF Phase II recipients should be permitted to specify that they are willing to deploy to a minimum of 90 percent of the required number of locations in their study areas within a state, with support reductions in direct proportion to the number of locations left unserved in a given state.[8] Because they are accepting funding for a fixed service area, price cap carriers electing a statewide commitment should have the flexibility to adjust their deployment commitments during the build-out period. In the competitive bidding process, if bidders are able to design their own bid areas, it makes sense for bidders to specify during the bidding process the percentage of locations to which they will deploy.

The CAM is an imperfect predictor of the build-out costs in particular locations, given the realities of actual network design versus the theoretical design envisioned by the model. It is inevitable that there will be locations that the model funds at one level that are substantially more costly to actually serve. These locations may be the difference between a provider being able to

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[7] *See FNPRM* at ¶¶ 165-67.

[8] A directly proportional reduction approach is administratively simpler and more equitable than reducing funding based on the support the model attributed to serving each location. While the CAM is good estimator of costs on a broader level, it is imperfect at estimating location-specific costs.

accept a state-wide commitment or make a competitive bid, versus that provider declining to participate in CAF Phase II. Flexibility to deploy to fewer than 100 percent of locations will enhance participation in CAF Phase II by enabling providers to mitigate the risk that they will be assuming a grossly uneconomic obligation.

With regard to the second flexibility measure, CAF Phase II recipients should be permitted to substitute unserved locations within partially served census blocks for locations within funded census blocks. As the Commission noted in the FNPRM, the Wireline Competition Bureau for administrative reasons concluded that partially served census blocks would be treated as fully served for the purposes of the CAF Phase II challenge process and distribution of support. Nevertheless, there exist many thousands of Americans in "served" census blocks who in reality lack broadband. CAF Phase II recipients should be permitted to serve these locations in lieu of locations in funded census blocks as long as the number of new locations is equal to or exceeds the number of locations that are being replaced. Such a measure is administratively simple and enhances the impact of CAF Phase II by encouraging efficient network design.

III. THE SAME BROADBAND REQUIREMENTS SHOULD APPLY IN THE COMPETITIVE BIDDING PROCESS AS IN THE STATE-WIDE COMMITMENT.

The Commission should adopt its proposal to apply the same usage allowances and latency benchmarks that the Bureau implemented for price cap carriers that will accept the offer of model-based support in the state-level commitment process to ETCs that will receive support through the competitive bidding process.[9] This would ensure that consumers have access to the same baseline level of broadband service and not differing levels based on the happenstance of

[9] *See FNPRM* at ¶ 149.

whether their ILEC accepts or declines the statewide commitment. To the extent the Bureau has deemed that the 100 GB usage allowance and 100 millisecond latency benchmark are necessary to render broadband service "suitable for real-time applications, such as VoIP, and with usage capacity reasonably comparable to that available in comparable offerings in urban areas,"[10] there is no logical reason that such standards would not apply in the context of the competitive bidding process.

IV. CAF PHASE II RECIPIENTS SHOULD BE REQUIRED TO SATISFY THEIR OBLIGATIONS USING A FIXED, TERRESTRIAL TECHNOLOGY.

Windstream urges that the Commission continue to adhere strictly to the concept that CAF Phase II recipients be required to deploy network capable of providing "broadband service that is reasonably comparable to *terrestrial fixed* broadband service in urban America."[11] The Commission in the *USF/ICC Transformation Order* correctly recognized that "few, if any" mobile and satellite broadband services will "meet the CAF speed, capacity, or latency minimums for all locations."[12] In particular, the Commission found:

> [T]he record suggests that satellite providers are generally unable to provide affordable voice and broadband service that meets our minimum capacity requirements without the aid of a subsidy: Consumer satellite services have limited capacity allowances today, and future satellite services appear unlikely to offer capacity reasonably comparable to urban offerings . . . . Likewise, while 4G mobile broadband services may meet our [4/1] speed requirements in many locations, meeting minimum speeds and capacity guarantees is likely to prove challenging over larger areas, particularly indoors. And because the performance offered by mobile services varies by location, it would be very difficult and costly for a CAF recipient or the Commission to evaluate whether such a service met our

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10 *See Connect America Fund*, WC Docket No. 10-90, Report and Order, at ¶ 4 (W.C.B. October 31, 2013).

11 *USF/ICC Transformation Order* at ¶ 160 (emphasis added).

12 *Id.* at ¶ 104.

> performance requirements at all homes and businesses within a study area, census block, or other required area.[13]

Performance testing of mobile and satellite services is in its infancy, and the Commission itself recognizes in the Notice that the Commission "has declined to include mobile services in the definition of broadband due to concerns about the reliability of data regarding mobile service."[14]

Until comprehensive, accurate, independent testing exists to verify that satellite and mobile services can deliver broadband that meets all of the performance standards for CAF Phase II to all households within a given service area, the Commission should require that all Phase II recipients satisfy their obligations using a fixed, terrestrial technology.

Similarly, recognizing "the benefits of certainty," the Commission stated that it did not anticipate changing the definition of "unsubsidized competitor" for the next several years.[15] Given that the challenge process for CAF Phase II is already underway, and given that there is no way to verify whether any mobile or satellite service can provide sufficient service to all locations within a given area, the Commission should continue to limit the definition of unsubsidized competitor to terrestrial, fixed providers of voice and broadband service.

V. AREAS WHERE A PRICE CAP CARRIER ALREADY OFFERS VOICE AND BROADBAND SERVICE SHOULD NOT BE EXCLUDED FROM CAF PHASE II.

Windstream understands and has been supportive of the concept that CAF Phase II support should not go to areas that are actually served by an unsubsidized competitor.[16] However, it strongly opposes the idea that areas where a *price cap carrier* already offers voice and

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13 *Id.*

14 *FNPRM* at fn.336.

15 *USF/ICC Transformation Order* at ¶ 104.

16 *See, e.g.*, Joint Comments of AT&T, CenturyLink, FairPoint, Frontier, Verizon and Windstream, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, at 13 (Aug. 24, 2011).

broadband service meeting the requisite standards should be excluded from receiving support under the competitive bidding mechanism.

The Commission in the *Comprehensive Reform Order* recognized the importance of "sustaining existing voice and broadband services" in addition to extending broadband service.[17] Thus, as the Wireline Competition Bureau noted in the Order adopting the platform for the Connect America Cost Model, providing support for areas where the price cap carrier already offers broadband is "consistent with the Commission's goals and directives."[18] The Bureau acknowledged that "carriers may have deployed broadband in certain areas based on past universal support and intercarrier compensation revenues . . . and still may require funding to sustain the previous broadband deployment."[19] This is true in the context of price cap carriers considering the statewide commitment, and is no less true in the context of a competitive bidding process in which price cap carriers are considering bids in their own service areas.

The Commission may choose to "exclude from Phase II support only those areas where the current provider certifies that it is able and willing to continue providing terrestrial fixed residential voice and broadband service meeting the Commission's requirements for a specified period of time, such as five years."[20] Such a rule likely would reduce the chance that CAF Phase II support is used to overbuild an existing provider or go to a price cap carrier that does not need it, and would provide a degree of certainty that some unsubsidized areas will continue to be served. However, the Commission should not as a general rule exclude from the competitive

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17 *See USF/ICC Transformation Order* at ¶ 156.

18 *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report and Order, at ¶ 43 (W.C.B. April 22, 2013).

19 *Id.* at ¶ 44.

20 *FNPRM* at ¶ 177.

bidding all areas that are currently served by a price cap carrier. Such a policy would be contrary to the Commission's goals to "sustain[] existing voice and broadband services."[21]

CONCLUSION

As the Commission sets out to update and resolve the open questions surrounding CAF Phase II, Windstream urges it to keep an unwavering focus on the provision of ubiquitous, robust broadband and voice services in high-cost areas, and align support and obligations to advance this objective.

Respectfully submitted,

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21 *USF/ICC Transformation Order* at ¶ 156.