

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Connect America Phase II	)	WC Docket No. 14-93
Challenge Process Subject Matter	)	

**OPPOSITION OF WINDSTREAM CORPORATION  
TO PETITIONS FOR LIMITED WAIVER OF  
CAF PHASE II EVIDENTIARY REQUIREMENT**

Windstream Corporation, on behalf of its incumbent local exchange carrier (“ILEC”) affiliates (hereinafter “Windstream”), submits the following opposition to the Petitions for Limited Waiver of the CAF Phase II Evidentiary Requirement submitted by Charter Communications, Vyve Broadband, Suddenlink Communications, and Bright House Networks, LLC (“the Petitioners”) in the above-referenced dockets.<sup>1</sup> The Petitioners seek limited waivers of the Wireline Competition Bureau’s determination that challenging parties must produce evidence of actual or former customers in a census block to certify that the block is “served” for the purposes of determining whether it is eligible for Connect America Fund (“CAF”) Phase II support. The Petitioners are attempting to re-raise issues that have been resolved in a reasoned, thoughtful way by the Bureau, and on which the Bureau flatly denied the cable associations’

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<sup>1</sup> See Petitions for Limited Waiver of CAF Phase II Evidentiary Requirement submitted by Charter Communications, Vyve Broadband, Suddenlink Communications, and Bright House Networks, LLC, WC Docket Nos. 10-90, 14-93 (filed August 14, 2014). Armstrong Utilities, Inc. (“Armstrong”) also purports to have submitted a similar Petition for Limited Waiver, but Windstream cannot locate it. To the extent the Commission considers Armstrong’s submission to constitute a valid Petition for Limited Waiver, Windstream opposes it also in this document.

Joint Petition for Reconsideration.<sup>2</sup> Petitioners cast the current filings as waiver petitions but present no unique circumstances justifying a waiver. The Petitioners have not established good cause or demonstrated that waivers would be in the public interest, and thus the Commission should deny their waiver requests.<sup>3</sup>

I. THE BUREAU REASONABLY SPECIFIED THAT PROVIDERS MUST SHOW A CURRENT OR FORMER CUSTOMER TO CERTIFY THAT A CENSUS BLOCK IS ‘SERVED’

The Bureau, acting on experience gained in the CAF Phase I challenge process, clearly specified in the context of CAF Phase II the criteria a provider must meet in order to demonstrate that a census block is “served” and thus ineligible for CAF Phase II support.<sup>4</sup> These criteria include that the “provider must already have customers in that census block, or previously had customers in that census block . . . [and] must be able and willing to provision voice and broadband service to customers in that census block within seven to ten days without an extraordinary commitment of resources and without any special construction charge or construction fee to consumers in that block.”<sup>5</sup>

This criterion is based on the reasonable assumption that if a competitive provider is actually serving a census block with voice and robust broadband, it would be able to demonstrate the existence of at least one current or former voice and/or broadband customer in that census blocks. Moreover, the Bureau’s clarified standard for CAF Phase II is appropriate given the

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<sup>2</sup> See *Connect America Fund*, WC Docket No. 10-90, Order (W.C.B. August 11, 2014) (denying Joint Petition for Reconsideration of American Cable Association and National Cable and Telecommunications Association both as untimely and on the merits).

<sup>3</sup> See 47 C.F.R. sec. 1.3 (setting standard for waiver grants).

<sup>4</sup> See Public Notice, Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process, WC Docket No. 10-90, at paras. 8-10 (W.C.B. June 20, 2014).

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

extremely high stakes for eligibility decisions in CAF Phase II. CAF Phase II support will replace current sources of ongoing support that are underwriting broadband deployment in high-cost areas, and if an area is deemed ineligible for CAF Phase II but actually is unserved by robust broadband, consumers in the area have little hope of getting broadband access in the foreseeable future. In light of these ramifications, the Bureau correctly has concluded that it should require that a certification that a census block is “served” must be supported by evidence of a current or former customer.

## II. PETITIONERS FAIL TO PRESENT GOOD CAUSE FOR A WAIVER OF THE BUREAU’S REQUIREMENT.

Despite the Bureau’s reasoned and reasonable decision, the Petitioners attempt to certify that certain census blocks are “served” even though (1) those census blocks have not been reported as served by the Petitioners in the relevant version of the National Broadband Map (June 2013 data), (2) the Petitioners do not state that those census blocks have been reported as served in the most recent version of the National Broadband Map (December 2014 data), and (3) the Petitioners cannot claim a single current or former customer in the census blocks. Three of the Petitioners, Vyve, Suddenlink, and Bright House, do not even claim that they are willing and able to provision broadband to customers in these census blocks within seven to ten days without any special construction charges.<sup>6</sup> Vyve and Bright House provide as proof nothing more than a list of “serviceable” addresses, without any explanation of what they mean when they purport to “offer[] broadband and voice services” in the census blocks. The other Petitioners, Charter and

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<sup>6</sup> See Vyve Petition, Suddenlink Petition, and Bright House Petition at 1-2. The omission is more striking because the language is included in the Charter Petition, and all of the Petitions were prepared by the same law firm and use much of the same verbiage.

Suddenlink, offer some representative advertising, but without any records demonstrating how and to what degree they provide such advertising in the relevant census blocks.

These types of deliberate wordsmithing and vague evidentiary displays are precisely what the Bureau was attempting to avoid when it issued clear guidance in its June 20 Public Notice. The Petitioners offer no persuasive evidence as to why the Bureau should depart from its set standards for when a provider may truthfully certify that a census block is “served.” In addition, the public interest would not be served by granting the waivers because loosening the Bureau’s evidentiary standards would increase the likelihood that unserved census blocks will be denied CAF Phase II support and customers in those census blocks will be left without broadband access for the foreseeable future.

### **CONCLUSION**

For the foregoing reasons, Windstream respectfully requests that the Commission deny the Petitioners’ requests for limited waiver of the Bureau’s determination that under CAF Phase II challenging parties must produce evidence of actual or former customers in a census block to certify that a census block is “served.”

Respectfully submitted,

/s/ Malena F. Barzilai

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