

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform)	WT Docket No. 10-208
)	
Mobility Fund)	

COMMENTS OF WINDSTREAM CORPORATION

Windstream Corporation, on behalf of itself and its affiliates (collectively “Windstream”), submits the following comments in response to the further inquiry by the Wireline Competition Bureau and Wireless Telecommunications Bureau (“the Bureaus”) into issues relating to the implementation of Phase II of the Mobility Fund (“Public Notice”).¹

As Windstream has asserted previously, to the extent “open Internet” requirements are applied to some broadband providers,² the Federal Communications Commission (“Commission”) should apply the full scope of these requirements to *all* entities receiving universal service funding for the provision of broadband as a supported service—including providers receiving Mobility Fund support. In the universal service context, where limited funding is being directed by government toward fulfilling Congressionally identified public benefits, it would be wholly inappropriate for the Commission to permit Mobility Fund

¹ *Further Inquiry into Issues Related to Mobility Fund Phase II*, WC Docket No. 10-90, WT Docket No. 10-208, Public Notice (rel. Nov. 27, 2012) (*Public Notice*).

² The Commission’s open Internet rules that are currently being challenged on appeal. *Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order (rel. December 23, 2010) (*Open Internet Order*), *pets. for review pending sub nom. In re: FCC 10-201*, No. 11-1355 (D.C. Cir. filed Sept. 30, 2011).

recipients to run afoul of network openness standards that it already has deemed necessary and proper for fixed broadband providers. Application of open Internet requirements on mobile providers would facilitate, for all consumers, access to comparable networks—an explicit goal of the Universal Service Fund.

In addition, though Windstream takes no position on the term of support that should apply to Mobility Fund Phase II, if the Commission chooses to institute the proposed 10-year term of support, it should do the same for Phase II of the Connect America Fund (“CAF”). As the Bureaus recognize in the Public Notice, Windstream has supported the notion that a 10-year term for CAF Phase II—rather than the five-year term the Commission has incongruously proposed for that program³—more properly reflects “economic realities of network building”⁴ and would be most consistent with the Commission’s goals.

I. ALL RECIPIENTS OF UNIVERSAL SERVICE FUNDING FOR BROADBAND DEPLOYMENT – INCLUDING MOBILITY FUND RECIPIENTS – SHOULD BE SUBJECT TO UNIFORM NETWORK OPENNESS STANDARDS.

In the wake of the Commission’s Report and Order in the *Preserving the Open Internet* proceeding, Windstream urges the Commission to establish that *all* entities receiving universal service funding for the provision of broadband as a supported service—be they wired or wireless, fixed or mobile—will be subject to uniform standards for network openness.⁵

Specifically the Commission should condition receipt of Mobility Fund support on a broadband

³ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd. 17663, at ¶¶ 1138, 1197 (2011) (*USF/ICC Transformation Order* and *FNPRM*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

⁴ *Public Notice* at ¶ 15 (citing Comments of Windstream Communications, Inc., WC Docket No. 10-90 et al., at 22 (Jan. 18, 2012)).

⁵ See Windstream Open Internet Comments at 6-19; Reply Comments of Windstream Communications, Inc., GN Docket No. 10-127 (August 12, 2010).

provider's compliance with the new rules, set forth in Part 8 of Title 47 of the Code of Federal Regulations, that are applicable to "fixed broadband Internet access service" providers.⁶

Congress created the Universal Service Fund so that "[q]uality services should be available at just, reasonable, and affordable rates," "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation," and that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to services . . . that are reasonably comparable to those services provided in urban areas and . . . at rates that are reasonably comparable"⁷ In this context, where limited funding is being directed by government toward fulfilling Congressionally identified public benefits, it would be wholly inappropriate for the Commission to permit funding recipients to run afoul of network openness standards that the Commission has deemed necessary and proper for fixed broadband providers. In addition, given the desire to limit the size of the Fund, awarding money to providers that are unwilling to comply with uniform network openness standards undoubtedly would deprive other providers, who are willing to comply with uniform standards, of funding to deploy open networks.

The Commission's decision to refrain from imposing the full scope of the open Internet rules on mobile wireless providers in the industry-wide proceeding should not deter further agency action in this context. The application of uniform network openness standards with respect to the Mobility Fund is appropriate because it will facilitate, for all consumers, access to

⁶ Windstream strongly opposes the imposition of any *additional* network management standards, beyond those set forth in Part 8 of Title 47, on any recipients of Universal Service high-cost funding.

⁷ 47 U.S.C. § 254(b)(1)-(3).

comparable networks—an explicit goal of the Universal Service Fund.⁸ Furthermore, a wireless carrier’s decision to bid for public support and to assume any attendant obligations is wholly voluntary. In this way, this situation is analogous to the auction for upper 700 MHz C Block spectrum, in which the Commission imposed openness conditions on winners of C Block spectrum.⁹ And as was the case for companies bidding for 700 MHz spectrum, some wireless providers that deploy mobile services have affirmatively stated that they would be willing to assume the application of openness rules to their mobile broadband service.¹⁰

II. A 10-YEAR TERM OF SUPPORT IS APPROPRIATE FOR BOTH CAF PHASE II AND MOBILITY FUND PHASE II.

Though the Bureaus propose a 10-year term of support for Mobility Fund Phase II support recipients,¹¹ the Commission incongruously has suggested only a five-year term of support for providers that receive funding through a CAF Phase II competitive bidding process.¹² Windstream takes no position on the appropriate term of support for the Mobility Fund, but if the Commission chooses to institute the proposed 10-year term, it should apply the same term of support to CAF Phase II. Such parity would be most consistent with the Commission’s intention to “transition[] universal service to an efficient, technology-neutral system.”¹³ Moreover, a 10-year term of support for CAF Phase II, rather than the proposed five years, would be most properly aligned with the economic realities of fixed broadband network building and would

⁸ *See id.*

⁹ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Second Report and Order, ¶ 206 (2007).

¹⁰ *Open Internet Order* at ¶ 93, fn.286 (citing comments of Clearwire and Sprint).

¹¹ *Public Notice* at ¶ 15.

¹² *FNPRM* at ¶¶ 1138, 1197.

¹³ *Id.* at ¶ 120. *See also* Report and Order, *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶¶ 46-52 (1997) (adopting neutrality principles for Universal Service Fund).

enable providers to roll out more broadband, thus better serving the Commission’s broadband availability goals.

In proposing a 10-year term of support for Mobility Fund Phase II recipients, the Bureaus note that they “[seek] to balance providing adequate certainty to carriers to attract private investment and deploy services while taking into account changing circumstances.”¹⁴ These considerations are no less relevant in the wireline context. The deployment of broadband infrastructure is a long-term proposition; the Commission-determined depreciable lives of the assets that carriers must put into place are much longer than five years—for example, the depreciable life of digital circuit equipment is 11 to 13 years, and of buried cable is between 20 and 30 years.¹⁵ Carriers are much more likely to be able to make significant commitments of resources, and attract the private investment needed to do so, if they are assured of receiving CAF funding to offset such expenses for a reasonable amount of time. In addition, a longer term of support makes it more likely that carriers will be able to invest in improving networks to meet the growing demand that the Commission predicts.¹⁶ Conversely, a shorter term of support makes it less likely that carriers will be able to utilize the support to fund “robust, scalable”¹⁷ networks. Therefore, as the Commission has suggested, “a longer time-period, e.g., ten years, would better serve [its] goals” for deploying both fixed and mobile broadband services.¹⁸

¹⁴ *FNPRM* at ¶ 1138 (presenting 10 years as its determined “optimal term for ongoing support”); *Public Notice* at ¶ 15.

¹⁵ See FCC’s Current Depreciation Ranges, available at <http://transition.fcc.gov/wcb/ppd/depreciation/documents/currDepRanges.pdf>.

¹⁶ See, e.g., *FNPRM* at ¶ 107 (noting that the National Broadband Plan estimated that by 2017, average advertised speeds for residential broadband would be approximately 5.76 Mbps downstream).

¹⁷ See *id.*

¹⁸ See *id.* at ¶ 1197.

Moreover, the Commission’s stated justification for proposing a five-year term of support for recipients of fixed broadband funding through a competitive bidding process—to match the term of support for fixed providers that accept state-level model determined support—is inapt.¹⁹ In the context of model determined support, the Commission found that a five-year funding term was appropriate to balance the desire to capitalize on the ability of incumbent carriers that can “deploy broadband networks rapidly and efficiently” with the desire to ensure that all areas are opened up to competitive bidding in a relatively short period of time.²⁰ No such balancing, however, is necessary in the context of fixed broadband support that is allocated pursuant to competitive bidding. In areas where the incumbent local exchange carrier declines the state-level commitment, an open competitive process will ensure that any interested carriers will have an opportunity to bid and support definitively will be distributed to the carrier able to provide the requisite services at the lowest cost. Therefore, there is no need for a shorter term of support to ensure the efficient, competitively neutral distribution of support. Under those circumstances—for the reasons the Commission has cited when proposing a 10-year funding term for the

¹⁹ See *id.* (proposing a term of support that “is equal to that adopted for providers that accept state-level model-determined support”). Windstream opposes a five-year term of support for the state-level commitment as well.

²⁰ See *id.* at ¶¶ 177-78 (explaining that the “purpose of the five-year commitment is to establish a limited, one-time opportunity for the rapid deployment of broadband services over a large geographic area,” and that this departure from the principle of “strict competitive neutrality” is limited and in service of the goals of promoting broadband deployment and “ubiquitous and comparable broadband services”). This view is contrary to that of Windstream and other members of the ABC Plan Coalition. A 10-year term of support permits a provider sufficient time and stability to realize a return on its significant investment, while a shorter term adds uncertainty to the process, increasing costs for providers and putting added strain on the fund. See ABC Plan, Attachment 1 at 2 (proposing a 10-year term of support); Letter from Debbie Goldman, Communications Workers of America, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, 07-135, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45 (October 14, 2011) (stating that “Ten years is the minimum time frame for allocating USF High-Cost support to ensure that public funding supports continuous upgrading of networks, rather than just hopping from one carrier to another”).

Mobility Fund Phase II—a 10-year term of support for CAF Phase II would strike the proper balance and render the system competitively neutral.

CONCLUSION

To protect the interests of consumers, the Commission should make clear that *all* entities receiving universal service funding for the provision of broadband as a supported service—be they wired or wireless, fixed or mobile—will be subject to uniform standards for network openness. In addition, if the Commission chooses to institute a 10-year term of support for the Mobility Fund, it should do the same for CAF Phase II. Such a move would be both most consistent with the Commission’s intention to “transition[] universal service to an efficient, technology-neutral system.”²¹

Respectfully submitted,

/s/ Malena F. Barzilai

Malena F. Barzilai
Eric N. Einhorn
Windstream Corporation
1101 17th St., N.W., Suite 802
Washington, DC 20036
(202) 223-7664 (phone)
(202) 223-7669 (fax)

Its Attorneys

December 21, 2012

²¹ *FNPRM* at ¶ 120.