

From: [Barzilai, Malena](#)
To: [BOCrfc2015](#)
Subject: Broadband Opportunity Council -- Comments of Windstream Services, LLC
Date: Wednesday, June 10, 2015 4:06:22 PM
Attachments: [NTIA comments.pdf](#)

Please see attached the comments of Windstream in response to the Notice and Request for Comment published in the Federal Register on April 29, 2015.

Thanks,
Malena

Malena F. Barzilai
Senior Government Affairs Counsel | Windstream
1101 17th Street, NW, Suite 802 | Washington, DC 20036
o: 202.223.4276 | m: 703.853.7140 | f: 330.487.2840
malena.barzilai@windstream.com | windstreambusiness.com

This email message and any attachments are for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message and any attachments.

**Before the
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
and
RURAL UTILITIES SERVICE**

Broadband Opportunity Council)	Docket No. 1540414365-5365-01
)	
Notice and Request for Comment)	
)	

COMMENTS OF WINDSTREAM SERVICES, LLC

Windstream Services, LLC (hereinafter “Windstream”) herein responds to the Public Notice by the National Telecommunications & Information Administration (NTIA) and the Rural Utilities Service (RUS) seeking comment on “perspectives and recommended actions the federal government can take to promote broadband deployment, adoption, and competition, including by removing regulatory barriers unduly impeding investments in broadband technology.”¹ First, Windstream suggests that NTIA, in conjunction with the Department of Justice (DOJ), should participate in the special access reform proceeding at the Federal Communications Commission (FCC) to help inform its unprecedented, large-scale analysis of market power being exerted by the large incumbent telephone providers in the non-residential services marketplace. Second, to maximize broadband deployment through Phase II of the Connect America Fund, the Department of the Treasury should issue a letter ruling clarifying that CAF Phase II support that is used to deploy networks constitutes a contribution to capital that is not taxable under federal law. Third, the executive agencies should consider positive measures to improve adoption of robust broadband in places where it is available.

¹ *Broadband Opportunities Council Notice and Request*, 80 FR No. 82, April 29, 2015 (*Notice*).

I. NTIA AND THE DEPARTMENT OF JUSTICE SHOULD PARTICIPATE IN THE FCC PROCEEDING THAT WILL BE CONDUCTING AN UNPRECEDENTED ANALYSIS OF COMPETITION IN THE MARKETPLACE FOR NON-RESIDENTIAL COMMUNICATIONS SERVICES.

The Federal Communications Commission (FCC) recently engaged in a data collection of unprecedented scale—including granular communications service data on locations, prices, terms, and conditions of TDM- and IP-based dedicated services—to assess competitive conditions for communications services used by business, nonprofit, and government entities.² While competitive carriers have invested billions in deploying fiber in the network backbone (Windstream now operates the sixth largest fiber network in the nation), Windstream expects these data will show that the last-mile of network facilities preceding a customer’s location is an enduring bottleneck for competition. More than eight years ago, the Government Accountability Office recognized that “available data suggest that facilities-based competitive alternatives for dedicated access [in commercial buildings] are not widely available” and recommended that the FCC “consider collecting additional data and developing additional measures to monitor competition on an ongoing basis.”³ The recent data collection is the long-awaited culmination of that recommendation. The FCC is expected to make data on these competitive conditions available for public review and analysis in the near future.

Windstream encourages NTIA and the Department of Justice to analyze the data on the non-residential market and provide input in the proceeding. The Department of Justice, as the federal agency responsible for enforcing the antitrust laws and promoting competition, and

² See *Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 05-25, RM-10593, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 16318 (2012) (*Data Collection Order*).

³ U.S. Government Accountability Office, *FCC Needs to Improve its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services* 1, 43-44 (2006).

NTIA, as the President's principal adviser on telecommunications and information policies, have significant expertise in telecommunications issues and have participated in prior FCC proceedings that addressed the role of competition in telecommunications.⁴ These agencies are well positioned to provide the FCC with an independent, rigorous assessment as to the presence of significant market power for services offered to non-residential customers.

Windstream encourages the DOJ in coordination with NTIA to focus on the impact of the exercise of market power over last-mile access on competition for integrated business service solutions. In particular, Windstream suggests that the NTIA and DOJ should review and monitor data regarding the availability of competitive last-mile packet-based connections to business, nonprofit, and government locations that do not require a large amount of bandwidth for efficient operations at their individual locations. Customers at these locations are most vulnerable to exertion of large incumbent market power, because competitive carriers usually cannot wage a viable threat of overbuilding the incumbents' connections to these locations. Competitive carriers, instead, must continue to rely on leasing incumbent carriers' last-mile connections to offer an alternative to the incumbent offerings, due to lack of an economically viable business case for overbuilding incumbent facilities in this portion of the network. The agencies can provide powerful insights regarding the specifics of the need for competitive service providers to have access to incumbents' last-mile facilities to ensure business, nonprofit, and government customers continue to benefit from competitive choices, and the potential for incumbents to use

⁴ See, e.g., Ex Parte Submission of the Department of Justice, WT Docket No. 12-269, at 7 (filed Apr. 11, 2013); Letter from Lawrence E. Strickling, Assistant Secretary for Communications and Information, Department of Commerce, to Julius Genachowski, Chairman, FCC, GN Docket No. 09-51 (filed January 4, 2010).

market power with respect to last-mile connections to reduce price, quality and innovation competition in downstream markets for integrated business solutions..

II. TO MAXIMIZE BROADBAND DEPLOYMENT IN HIGH-COST AREAS, THE DEPARTMENT OF THE TREASURY SHOULD CLARIFY THAT CAF PHASE II SUPPORT USED TO DEPLOY NETWORKS IS NOT TAXABLE.

The FCC currently is implementing widespread reform through the Connect America Fund Phase II that will significantly expand deployment of robust broadband in rural areas. To help ensure that carriers are able to use CAF Phase II funding to maximize the provision of broadband, Windstream recommends that the Department of the Treasury issue a letter ruling or other statement that the Internal Revenue Service (IRS) should designate CAF Phase II distributions used to deploy networks as contributions to capital, which are not taxed.

As The National Broadband Plan recommended, the Commission needs to implement universal service reform “in a tax-efficient manner to minimize the size of the [broadband availability] gap.”⁵ The Internal Revenue Service treated traditional universal service support as taxable income, and if it views CAF support in the same way, it will be an economic barrier to many carriers accepting CAF support and to the obligations to deploy broadband networks. The Internal Revenue Service, instead, should designate CAF Phase II support for network deployment as a direct contribution to the capital of the recipient—a designation that would appropriately recognize important distinctions between CAF Phase II and predecessor federal universal service programs and would help stretch the positive impact of limited universal service support.

⁵ Federal Communications Commission, *Connecting America: The National Broadband Plan*, Recommendation 8.4 at 146 (rel. Mar. 16, 2010).

The FCC designed the CAF to “extend broadband service to hundreds of thousands of unserved locations” and to “efficiently support deployment of networks providing both voice and broadband service.”⁶ In contrast to the prior USF mechanisms, CAF Phase II explicitly funds and requires investment in broadband infrastructure and establishes specific accountability and efficiency measures. To monitor its own progress toward ensuring universal availability of broadband, the FCC will “use the number of residential, business, and community anchor institution locations that *newly gain* access to broadband service.”⁷ All CAF Phase II participants must be able to certify to the FCC that they have achieved FCC-established deployment milestones and build-out commitments.⁸

The broadband deployment benefits of this program, however, are limited to what can be achieved under a strict funding budget. Specifically the FCC, for the first time, is working with a fixed annual high-cost budget of \$1.8 billion for CAF Phase II in the areas served by price cap carriers. To meet the aggressive network deployment goals the Commission has set for itself and support recipients, every one of those dollars must go directly toward the provision of robust broadband networks.

III. EXECUTIVE AGENCIES SHOULD CONSIDER ADDITIONAL MEASURES THAT WILL ENCOURAGE GREATER ADOPTION OF ROBUST BROADBAND WHERE IT IS AVAILABLE.

The Executive Branch agencies can complement the work of the FCC by continuing to pursue positive measures to encourage the adoption of robust broadband by individuals,

⁶ Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, 26 FCC Rcd. 17663, 76 FR 78384, FCC 11-161, ¶ 127 (released November 18, 2011) (*USF/ICC Transformation Order*).

⁷ *Id.* at ¶ 52.

⁸ *See, e.g.*, 47 C.F.R. § 54.313(b)-(e).

businesses, and anchor institutions. As a result of a massive private-sector investment in broadband deployment, supplemented by Universal Service Fund support and initiatives such as the NTIA's Broadband Technology Opportunities Program and the RUS's Broadband Initiatives Program, the vast majority of Americans currently have access to robust broadband. Three years ago in its Eighth Broadband Progress Report, the FCC noted that 94 percent of Americans had access to broadband meeting the then-applicable speed benchmark.⁹ This year in its Ninth Report, the FCC significantly increased the speed benchmark to 25 Mbps/3 Mbps; still, at that level, 83 percent of Americans already have access to broadband.¹⁰

To enable greater broadband usage, the FCC, as noted above, is reorienting its Universal Service Fund programs toward broadband deployment. In addition to adoption of CAF Phase II, the FCC has instituted its first major reforms to the Schools and Libraries program in nearly two decades, increasing the budget and transitioning funding toward broadband-related services. Most recently, FCC Chairman Tom Wheeler last month expressed his intention to issue proposals for modernizing the Lifeline program to support broadband adoption.

Despite this substantial FCC commitment, Windstream observes that many individuals and anchor institutions that already have access to robust broadband do not purchase and utilize available broadband services at optimal levels. Consumers' ability to pay for higher speed tiers

⁹ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Amended by the Broadband Data Improvement Act*, GN Docket No. 11-121, Eighth Broadband Progress Report and Order on Reconsideration, 27 FCC Rcd 10342, 10370 (2012).

¹⁰ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, at ¶ 51 (rel. February 4, 2015).

likely is one reason for this phenomenon, and a reason the FCC is pursuing reforms to the federal Universal Service Fund. However, there are other reasons for low adoption levels, including deficiencies in digital literacy and understanding by individuals, schools and libraries, of the benefits that robust broadband can provide. The Executive Agencies, including the NTIA and the Department of Education, are well suited to provide resources to enhance adoption of robust broadband. For example, the NTIA should continue efforts like its grants to improve digital literacy, actions to help low-income households gain access to equipment and service, and maintenance of the Broadband Adoption Toolkit.¹¹ In addition, the NTIA should participate actively in the FCC's upcoming Lifeline reform proceeding by sharing its lessons learned.

Similarly, with regard to schools and libraries, the NTIA and the Department of Education should continue to provide resources, such as curriculum assistance, to help teachers and schools take advantage of Internet learning opportunities. For example, the agencies should look to expand the Open Education Ecosystem and produce professional development for teachers. A report submitted to the record by the LEAD Commission cites a study showing that 83 percent of teachers believe that they are not receiving the necessary training to use technology to its fullest potential in the classroom.¹² In addition, Windstream recommends that the NTIA and the Department of Education develop a pilot project to help schools come up with technology plans to utilize the FCC's Schools and Libraries program more effectively.

¹¹ See NTIA, "Household Broadband Adoption Climbs to 72.4 Percent," *available at* <http://www.ntia.doc.gov/blog/2013/household-broadband-adoption-climbs-724-percent> (linking to Broadband Adoption Toolkit).

¹² LEAD Commission, *Paving a Path Forward For Digital Learning in the United States*, at 7 (September 2013), *available at* <http://www.leadcommission.org/sites/default/files/LEAD%20Commission%20Blueprint.pdf>.

CONCLUSION

Windstream, in conclusion, recommends the following actions to NTIA and RUS: (1) NTIA, in conjunction with the DOJ, should participate in rigorous evaluation of data that will show the extent to which incumbent market power is exhibited in the non-residential communications marketplace; (2) to maximize broadband deployment through Phase II of the Connect America Fund, the Department of the Treasury should issue a letter ruling clarifying that CAF Phase II support that is used to deploy networks constitutes a contribution to capital that is not taxable under federal law; and (3) the executive agencies should consider additional measures that will improve adoption of robust broadband in places where it is available.

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)

Its Attorneys

June 10, 2015