

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	

PETITION FOR STAY PENDING RECONSIDERATION

CenturyLink¹ hereby requests that the Wireline Competition Bureau (“Bureau”) stay enforcement of the Commission’s withholding penalties and reporting requirements, set forth in section 54.320(d)(1)(iv) of the Commission’s rules. In a letter dated February 22, 2019, the Bureau notified CenturyLink that it is subject to these penalties and enhanced reporting requirements based on the Bureau’s determination that CenturyLink missed its 40 percent interim deployment milestone for Connect America Fund (“CAF”) Phase II in Arkansas, Kansas, Montana, and Wisconsin (collectively the “Four States”).² Concurrently herewith, pursuant to section 1.106 of the Commission’s rules, CenturyLink is filing a Petition for Reconsideration of

¹ This Petition is filed by the subsidiary entities of CenturyLink, Inc. that were the subject of the Noncompliance Letter, *infra* note 2. Those entities are the operating company subsidiary entities that are designated as Eligible Telecommunications Carriers (ETCs) in Arkansas, Kansas, Montana, and Wisconsin, including CenturyTel of Arkansas, Inc. dba CenturyLink, United Telephone Company of Kansas, Qwest Corporation (Montana) dba CenturyLink QC, and CenturyTel of the Midwest-Kendall, LLC dba CenturyLink (collectively, “CenturyLink”).

² Letter from Ryan Palmer, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, FCC, to Jeffrey S. Lanning, Vice President, Federal Regulatory Affairs, CenturyLink (Feb. 22, 2019) (“Noncompliance Letter”).

the Bureau’s determination and Universal Service Administrative Company’s (“USAC”) noncompliance findings.³

A stay of the Commission’s withholding penalties and enhanced reporting obligations arising out of USAC’s noncompliance findings is warranted because CenturyLink is likely to prevail on the merits of its Petition for Reconsideration and the balance of equities favors a stay.⁴ Because USAC will begin withholding funds later this month, CenturyLink respectfully requests expedited consideration of this petition.

DISCUSSION

The Commission considers requests for stay under the test set forth in *Virginia Petroleum Jobbers*.⁵ To support a stay, a petitioner must demonstrate that (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm if a stay is not granted; (3) other interested parties will not be harmed if the stay is granted; and (4) the public interest favors granting a stay.⁶ Although

³ CenturyLink Petition for Reconsideration, WC Docket No. 10-90 (filed Mar. 12, 2019) (“Petition for Reconsideration”).

⁴ In the alternative, CenturyLink requests that the Bureau hold the application of any withholding and reporting requirements in temporary abeyance pending resolution of the Petition for Reconsideration, consistent with Bureau precedent in similar cases. *See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, Order, 23 FCC Rcd 10731, 10733 ¶ 6 n.17 (2008) (USAC decision held in temporary abeyance pending Commission review where a lack of clarity regarding Commission policy constituted “unique circumstances”). *See also The Tennis Channel, Inc. v. Comcast Cable Communications, LLC*, 27 FCC Rcd 5613, 5615-16 ¶ 5 (2012) (granting a “stay for administrative reasons” as “equitable” and in the public interest in the “first program carriage adjudication” in which an administrative law judge required certain relief and which “presents important issues that are likely to recur in future”).

⁵ *Virginia Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958).

⁶ *Id.*

the test has four prongs, the latter three are often addressed collectively as the “balance of equities.”⁷ In this case all of the elements strongly weigh in favor of a stay.

I. CenturyLink Is Likely to Prevail on the Merits.

The Petition for Reconsideration explains why USAC erred in finding that CenturyLink has not met its 40 percent milestone in the Four States and why CenturyLink should not be subject to noncompliance penalties. As the Petition for Reconsideration demonstrates, CenturyLink’s good faith efforts to improve the accuracy of its geocode locations was consistent with the CAF-II rules and Bureau and USAC guidance.⁸ USAC’s noncompliance finding was based largely on its conclusion that there was a discrepancy between the geocodes associated with the addresses in one of CenturyLink’s internal databases—its Living Unit database used for planning and regulatory compliance purposes—and the “interpolated locations” that CenturyLink entered into the High Cost Universal Broadband (“HUBB”) portal. This discrepancy occurred, however, because CenturyLink complied with USAC’s guidance that it “review” and “clean up” its geocoding results to ensure accuracy. Specifically, CenturyLink recognized that the automated geocode data in the Living Units database was not as accurate as USAC encouraged, and took additional steps, consistent with USAC direction, to derive more reliable geocode data to enter into the HUBB. CenturyLink’s documentation and explanations throughout the “verification” (audit) process were more than sufficient to enable USAC to match the HUBB entries to the construction records provided by CenturyLink. The Petition for Reconsideration also describes why Census Block Locations should be counted along with all of

⁷ See, e.g., *Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (1977).

⁸ See *id.* at Section I.

the other Mismatch Locations⁹ and why CenturyLink should not be subject to penalties at this time resulting from the disqualification of multi-dwelling units (“MDUs”) or the inclusion of locations that CenturyLink had identified as no longer enabled for CAF-II purposes in USAC’s sample.¹⁰ The compelling showing in the Petition for Reconsideration establishes a likelihood of success on the merits.

II. The Balance of Equities Favors Granting a Stay.

The remaining *Virginia Petroleum Jobbers* factors also strongly favor a stay. As the Commission has recognized, the relative importance of the *Jobbers* factors varies depending upon the circumstances. If there is an overwhelming showing regarding at least one factor, the Commission may find that a stay is warranted.¹¹ Here, the public interest clearly would be served by staying enforcement of the withholding penalties and reporting requirements pending full consideration of the Petition for Reconsideration. In addition, no other party will be harmed by a stay, and CenturyLink is likely to suffer irreparable harm if a stay is not granted.

The Public Interest Strongly Favors a Stay. The public interest would be served by the grant of a stay in this case. As the Commission has repeatedly recognized, pockets of rural customers lack access to broadband because there is not a compelling business case to deploy it without support.¹² To address this issue, the Commission established the CAF to promote

⁹ *See id.*

¹⁰ *See id.* at Section II.

¹¹ *See, e.g., 4.9 GHz Band Transferred from Federal Government Use*, Order, 19 FCC Rcd 15270, 15272 (2005).

¹² *See, e.g., Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17688 ¶ 67 (2011); *Connect America Fund, et al.*, Report and Order, 29 FCC Rcd 15644, 15649 ¶ 15 (2014); Ajit Pai, Chairman, FCC, Remarks at the Farm Foundation/U.S. Department of Agriculture Summit, at 2 (Apr. 18, 2018) (“[W]hen we talk about extending digital opportunity to rural America, the central challenge is that high costs and

targeted broadband deployment. A stay would advance the public interest because it will ensure that CenturyLink's timely deployment of broadband to unserved locations is not impeded, given that the costs to CenturyLink of providing service to high-cost areas under the program are real and necessitate support. By contrast, the withholding of support under the facts set forth in the Petition for Reconsideration would disserve the public interest by undermining CenturyLink's ability to deploy. It also could deter support recipients from making efforts to improve the accuracy of the geolocation data they submit.

No Harm to Others. A stay of the withholding penalties and reporting requirements will not harm any other party. First, USAC will suffer no harm by waiting until the Bureau has reviewed its default determination before enforcing that determination. In addition, a stay would not adversely affect USAC because its ability to recover any support payments would be preserved pending the outcome of the review. Second, no other parties would suffer harm if a stay is granted. To the contrary, all CAF-II recipients and the program itself would benefit from the principle that support should not be withheld based on newly arising issues where Commission guidance is needed and likely forthcoming. Finally, taking actions based on the Bureau's initial determination, especially given the likelihood that CenturyLink will prevail, would be a waste of resources for CenturyLink, USAC, and the Commission.

Irreparable Harm to CenturyLink. To demonstrate irreparable harm, a petitioner must demonstrate that the harm is certain and great, actual, and not theoretical.¹³ Although many

low population density make the private-sector business case for rural broadband deployment much more difficult.”).

¹³ *Iowa Utilities Bd. v. FCC*, 109 F.3d 418, 425 (8th Cir. 1996).

forms of economic loss are not deemed irreparable,¹⁴ the threat of unrecoverable economic loss does qualify as irreparable harm.¹⁵ The Bureau's decision puts CenturyLink in an untenable position. Even though CenturyLink extended service to the requisite number of new covered locations (or, in one state, enough locations to avoid any withholding) in 2017, USAC's findings of noncompliance mean that CenturyLink will be subject to monthly withholding penalties of approximately \$4.45 million. The Bureau is not required to act on CenturyLink's Petition for Reconsideration within any specified period of time.

Under present circumstances, these losses could well be unrecoverable. If CenturyLink's support is withheld as ordered in the Noncompliance Letter, this may interfere with the company's ability to continue to deploy broadband to additional locations. Under the CAF-II rules, the company is subject to graduated deployment milestones with each passing year,¹⁶ and significant penalties if it does not complete at least 95 percent of its total required deployment by the end of 2020.¹⁷ If the company is subjected to unwarranted withholding of support while the Bureau considers the Petition for Reconsideration, it could prevent CenturyLink from ultimately meeting its requirements by next year. Thus, the Noncompliance Letter poses the risk of unrecoverable losses.

¹⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 11754, 11756-57 ¶ 8 (1996).

¹⁵ *Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 552 (4th Cir. 1994); *Baker Elec. Coop., Inc. v. Chaske*, 28 F.3d 1466, 1473 (8th Cir. 1994).

¹⁶ 47 C.F.R. § 54.310(c).

¹⁷ *Id.* at § 54.320(d)(2).

CONCLUSION

For the reasons discussed above, the Bureau should stay the effectiveness of the withholding penalties and reporting requirements set forth in section 54.320(d)(1)(iv) of the Commission's rules pending the Commission's resolution of the Petition for Reconsideration.

Respectfully submitted,

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