

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

COMMENTS OF CENTURYLINK

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EXECUTIVE SUMMARY

In adopting its *USF/ICC Transformation Order*, the Commission has undertaken a critical and monumental task to make Commission rules pertaining to universal service and intercarrier compensation more relevant to modern communication technology and in turn to today's communications marketplace. As the Commission moves forward with implementing and further designing its universal service reforms to promote broadband service availability throughout the country, the Commission should ensure that (1) a provider's high-cost universal service obligations are limited to the geographic areas for which the provider is receiving that high-cost support; (2) there is parity in high-cost universal service obligations; and (3) high-cost areas with an unsubsidized competitor are eligible for CAF support if the unsubsidized competitor is unable or unwilling to provide the required level of broadband service to all or almost all of the locations in the area.

With respect to measuring and reporting broadband performance for CAF recipients, the Commission should adopt a uniform measuring methodology while utilizing existing reporting mechanisms to monitor industry performance. In evaluating reasonably comparable rates and services, the Commission should plan to compare the standard, non-promotional rates for standalone broadband service or broadband bundled with voice service that meets the CAF broadband performance criteria. The Commission should not specifically require CAF recipients to provide IP-to-IP interconnection for voice service, but instead address IP-to-IP interconnection for all providers. And, CAF recipients should not be subject to interconnection and capacity support obligations for municipally-owned networks. Additionally, publicly-traded incumbent providers, like CenturyLink, should not need to provide financial guarantees such as a letter of credit to ensure that they will be accountable for any failure to comply with their CAF

obligations. Such companies have the necessary financial, managerial and technical expertise to meet CAF obligations as demonstrated by proven track records of investment in their networks and compliance with FCC rules and commitments.

With respect to the further design and implementation of CAF Phase II, the Commission should focus its efforts on ensuring that the model-determined support and corresponding deployment timelines properly incent price cap carriers to assume the state-level commitments. At the same time, the Commission should proceed with designing the competitive bidding mechanism that will distribute CAF Phase II support in areas where price cap carriers decline the state-level commitment. Among other design aspects, the mechanism should permit price cap carriers to participate in the competitive bid process for areas where they have declined state-level commitments, should only provide CAF support for one provider per geographic area, and should not use individual census blocks or census tracts as bidding areas.

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COMMENTS OF CENTURYLINK

I. INTRODUCTION

CenturyLink submits these comments in response to the *Further Notice of Proposed Rulemaking* in the above-captioned proceeding.¹ Specifically, these comments address the issues raised by the Commission in Sections XVII. A-K of the *FNPRM* regarding further reform of

¹ See *In the Matter of 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*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*FNPRM* or *USF/ICC Transformation Order*); *pets for recon. pending; pets. for rev. of the Report and Order pending, sub nom. Direct Communications Cedar Valley, et al. v. FCC*, (10th Cir. Nos. 11-9581, et al.).

universal service support mechanisms in order to support broadband deployment and services in high-cost areas of the country.

CenturyLink supports the Commission's proposed universal service reformations to enable broadband service throughout the country. The Commission has undertaken a critical and monumental task to make Commission rules pertaining to universal service and intercarrier compensation more relevant to modern communication technology and in turn to today's communications marketplace. As the Commission continues to work through the details of this Herculean effort, there are certain key tenets that should underlie the changes to the high-cost universal service mechanisms.

First, any universal service obligations for carriers providing supported services in high-cost areas should only apply in those areas for which the carriers are receiving the universal service support. And, any universal service obligations should only extend to the services explicitly supported in that area. A carrier should not have any universal service obligations in areas where the carrier is not receiving universal service support. In today's competitive marketplace, unfunded universal service mandates for select carriers are harmful to both carriers and consumers. Universal service obligations must be consistent with the support received.

Second, as much as is reasonably prudent and consistent with today's communications marketplace, the Commission should strive for parity. This includes parity in reporting obligations, in measuring broadband, in competitive bidding qualifications, and in service obligations. Receipt of high-cost support should engender the same universal service obligations on all carriers receiving that support.

Third, for the purposes of both CAF Phase I and Phase II support, a geographic area should not be excluded from funding if the unsubsidized competitor is incapable of ubiquitous or

near ubiquitous coverage of the targeted high-cost area. In other words, where an unsubsidized competitor is only able to provide the required level of broadband service to some, but not most or all, residential and business locations in a high-cost area, that area should remain eligible for high-cost support. Further, to the extent that existing broadband mapping efforts have identified certain census blocks as served due to the existence of an unsubsidized broadband competitor offering broadband service, those census blocks should not be considered served – and thus ineligible for CAF support – if the unsubsidized provider is unable or unwilling to provide the required level of broadband service to all, or almost all, locations within those census blocks.

II. DISCUSSION

A. Broadband Public Interest Obligations

The Commission inquires about measuring and reporting broadband performance, the appropriate test for evaluating whether rates for broadband service between rural and urban areas are reasonably comparable, whether to require CAF recipients to offer IP-to-IP interconnection for voice service, and whether to require CAF recipients to make interconnection points and backhaul capacity available to support high-cost communities' self-deployment of local broadband networks. With respect to measuring and reporting broadband performance, the Commission should adopt a uniform measuring methodology while utilizing existing reporting mechanisms to monitor industry performance. In evaluating reasonably comparable rates and services, the Commission should look to compare the standard rates for standalone broadband service or broadband bundled with voice service that meets the CAF broadband performance criteria. The Commission should not specifically require CAF recipients to provide IP-to-IP interconnection for voice service. Rather, the Commission should address IP-to-IP interconnection for all providers as it is already doing elsewhere in the *FNPRM*. Finally, CAF

recipients should not be subject to public interest obligations beyond their supported area, such as interconnection and capacity support obligations for municipally-owned networks.

1. Additional Broadband Performance Reporting Requirements For CAF Recipients Are Unnecessary

In the *USF/ICC Transformation Order*, the Commission has adopted a rule that requires each ETC to measure actual speed and latency on its broadband access network from the end-user interface to the nearest Internet access point.² The Commission also requires that each ETC certify to and report its broadband measurement results to USAC on an annual basis.³ The Commission states in the *USF/ICC Transformation Order* that the measurements are for the purposes of testing CAF recipients' networks' compliance with speed and latency metrics.⁴ In the *FNPRM* the Commission asks whether it should adopt a more specific measurement methodology beyond what is described in the *USF/ICC Transformation Order* and about the format in which ETCs should report their results.⁵

With respect to measuring broadband performance, the Commission should pursue a uniform methodology for measuring broadband performance that can be applied and compared across different technologies. It is important to the Commission's broadband universal service objectives that the Commission measure broadband performance in a manner that allows it to effectively gauge the extent to which broadband service at a set performance level is universally available across all broadband technologies. A uniform measuring methodology should enable this assessment.

² *USF/ICC Transformation Order* ¶ 111.

³ *Id.* ¶ 109.

⁴ *Id.* ¶ 110.

⁵ *FNPRM* ¶ 1013.

It is not necessary, however, to require CAF recipients providing fixed services to install SamKnows-type white boxes at consumer locations in order to monitor actual performance. This can be permitted but is not necessary to accomplish a uniform measuring methodology. Industry participants should be afforded flexibility to implement the measuring methodology in a manner that best fits with their business needs.

With respect to reporting broadband performance, the Commission already requires broadband providers to report and disclose broadband performance metrics. The existing broadband performance reporting and disclosure requirements are sufficient for reporting broadband performance metrics such that the Commission does not need to require substantial additional broadband performance requirements specific to CAF recipients.

Twice a year broadband providers must disclose detailed data on the FCC Form 477 regarding its broadband services and availability. Generally, on the form broadband providers must identify for each census tract in which they provide broadband service the types of technology used to provide their broadband service.⁶ Further, for each technology they have to report the number of broadband connections in each relevant download/upload information transfer rate combination, and the percentage of connections that are residential.⁷ Additionally, pursuant to the Commission's *Open Internet Order*, broadband providers are required to make network performance characteristics publicly available.⁸ This includes providing end-users with information regarding actual and expected speed and latency metrics.⁹

⁶ See <http://transition.fcc.gov/Forms/Form477/477inst.pdf> at 9.

⁷ *Id.*

⁸ *In the Matter of Preserving the Open Internet; Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17905, 17938-39 ¶ 56 (2010) (*Open Internet Order*).

⁹ *Id.*

Given these existing obligations to report and disclose broadband performance metrics, the Commission should first evaluate potential modification of its existing reporting mechanisms before imposing additional reporting requirements on CAF recipients. The SamKnows report reflects that broadband service is available at high speed levels.¹⁰ In lieu of entirely new reporting requirements, CAF recipients should be required to certify their compliance with their CAF broadband service obligations and to retain supporting data for a reasonable period of time to be available for audit purposes.

Regardless of size or service platform, all CAF recipients should be subject to the same broadband performance measuring and reporting obligations. Broadband performance measuring obligations should not be eased for smaller providers unless those measuring obligations are significantly more burdensome on smaller providers. Generally, CAF recipients should have the same measuring obligations, in order to ensure that consumers in CAF-supported areas are being evenly represented in the broadband performance data pool. And CAF recipients should be subject to the same reporting requirements to ensure even application of broadband performance requirements.

2. Considerations For Evaluating Reasonably Comparable Voice And Broadband Service

The Commission seeks comment on the appropriate components of a survey that would compare urban and rural voice and broadband services and rates for the purpose of evaluating the reasonable comparability of those services and rates.¹¹ Any evaluation of reasonably comparable broadband rates and services in rural and urban areas should only apply to the basic, non-promotional pricing for broadband service that meets the broadband performance criteria for

¹⁰ See Measuring Broadband America, A Report on Consumer Wireline Broadband Performance in the U.S., <http://www.fcc.gov/measuring-broadband-america#read>.

¹¹ FNPRM ¶¶ 1018-27.

CAF support. Either or both standalone broadband service or broadband service bundled with voice service could be the basis for a reasonable comparability analysis. Further, any reasonable comparability analysis of rural broadband rates should recognize the high-cost nature of rural markets and acknowledge the fact that rural rates in most cases will need to be higher than urban rates to help recover the higher costs of providing service in rural areas.

Whether mobile and fixed broadband services should be subject to the same reasonable comparability analysis depends on how the services are viewed for purpose of universal service support. To the extent that mobile and fixed broadband services are competing for the same universal service support, they should be subject to the same structures for evaluating reasonable comparability of voice and broadband services and rates between urban and rural areas. To the extent that mobile and fixed broadband services are not competing for the same universal service support, different structures for evaluating reasonable comparability may be appropriate.

Ultimately the reasonable comparability analysis for purposes of high-cost universal service support needs to ensure that the supported services in high-cost areas are being offered at rates that are reasonably comparable to the rates at which the same or reasonably similar services are offered in more urban areas. There should be a presumption that a given provider offering the same rate, terms and conditions (including any capacity limits) to both urban and rural customers satisfies the statutory requirement that rural and urban prices are reasonably comparable.

3. The Commission Should Not Impose Additional Public Interest Obligations On CAF Recipients

The Commission seeks comment on whether to require CAF recipients to offer IP-to-IP interconnection for voice service. IP-to-IP interconnection for voice services should not be a requirement imposed on CAF recipients. IP-to-IP interconnection is not a universal service

issue; it is an industry issue caused by the technological evolution of networks. All segments of the industry should be subject to the same IP-to-IP interconnection standards and requirements.

Further, deploying a broadband infrastructure does not automatically position a network for IP-to-IP interconnections. IP-to-IP interconnection provides an opportunity to design efficient interconnection points based on the interconnecting companies' networks, and should be left to commercial negotiations rather than regulatory dictates. Parties should be able to negotiate in good faith to accomplish such interconnection. To the extent, however, the Commission adopts any rules for IP-to-IP interconnection, those rules should be applied industry-wide, without any special IP-to-IP interconnection requirements for CAF recipients.

The Commission also seeks comment on the proposal of Public Knowledge and the Benton Foundation that CAF recipients be required to make interconnection points and backhaul capacity available so that unserved high-cost communities could deploy their own broadband networks.¹² Given the fact that CAF funding will be allocated to high cost, low density markets, mandating interconnection and backhaul capacity for CAF recipients may jeopardize an already fragile business case for broadband deployment. These issues are better left to commercial negotiation in the event the deploying carrier has any excess long-term capacity to lease.

Further, the Public Knowledge and Benton Foundation proposal seems to assume that municipalities would have the requisite competencies and capabilities to deploy and maintain a broadband network. But experience has shown that more often than not municipalities lack the foundation of knowledge and investment that ensure the long-term viability and expertise customers expect from a provider.¹³ In turn, customers of municipal communications providers

¹² *FNPRM* ¶ 1029.

¹³ See Joseph P. Fuhr Jr., *The Hidden Problems with Government-Owned Networks*, <http://www.coalitionfortheneweconomy.org/wp-content/uploads/2012/01/1-6-12-Coalition-for-a->

may be at risk of reduced service quality, weak infrastructure, increased taxes in other areas to make up revenue shortfalls, and an inability to keep up with rapidly changing technology in today's communications industry.¹⁴ These concerns may be even greater in more rural areas where costs are higher and the risk is spread to fewer households and businesses.

Requiring CAF recipients to support municipal network deployment efforts outside of their CAF-supported areas seems a sub-optimal approach to promoting broadband deployment in high-cost areas. For these same reasons, CenturyLink also disagrees with the Public Knowledge and Benton Foundation proposal to create a fund for a Technology Opportunities Program in order to assist communities with deploying their own broadband networks.

B. ETC Service Obligations Must Be Limited To Supported Areas

Federal universal service obligations should be consistent with federal universal service support. As federal support is repurposed for broadband service, existing voice reporting obligations need to be streamlined and eliminated as new broadband obligations take their place. Federal voice ETC obligations should be eliminated everywhere that federal support is not being provided for voice services.¹⁵ If a provider is not receiving federal universal service high-cost support for an area, then, correspondingly, there should not be a federal ETC obligation in that area. Where legacy high-cost support is reduced or eliminated, ETC voice service obligations should be correspondingly reduced or eliminated.

New-Economy-White-Paper.pdf; National Journal, Municipal Broadband: Greater than Expected Challenges, Mar. 10, 2008 (updated Feb. 4, 2011) by Winter Casey <http://www.nationaljournal.com/daily/municipal-broadband-greater-than-expected-challenges-20080310>.

¹⁴ Comments-NBP Public Notice #7 of Qwest Communications International Inc., GN Docket Nos. 09-51, 0-47 and 09-137, filed Nov. 6, 2009 at 9-12 and n.19: Municipal Broadband: Digging Beneath the Surface, Balhoff & Rowe, LLC, Sept. 2005 at 123.

¹⁵ State high cost funds will likely be necessary longer term to ensure that any remaining state carrier-of-last-resort voice obligations are funded.

Any ETC obligations for CAF recipients must be limited to those areas where those providers are receiving CAF support. The obligations should be consistent with the specific geographic areas for which a provider is receiving CAF support. If the support is only for certain census blocks in a wire center, then the ETC service obligations should only be for those census blocks in the wire center.

C. Incumbent Providers Do Not Need To Provide Financial Guarantees To Ensure Accountability

The Commission seeks comment on measures to impose greater accountability on recipients of funding including financial guarantees and penalties for failures to meet CAF service obligations.¹⁶ With respect to financial guarantees, the Commission seeks comment on whether all ETCs should be required to obtain an irrevocable standby letter of credit (LOC) by January 1, 2013, as a condition to receiving high-cost and CAF support.¹⁷ The Commission should not pursue such a requirement for publicly-traded ILECs that file financial reports with the Securities and Exchange Commission.

Publicly-traded incumbent providers should not be subject to an LOC requirement or required to post other financial security as a condition of receiving support. Incumbent providers have already demonstrated that they can commit sufficient financial resources to comply with the CAF obligations to provide voice and broadband service and have ample, existing financial and regulatory oversight. Well-established carriers, like CenturyLink, have the necessary financial, managerial and technical expertise to meet CAF obligations as demonstrated by proven track records of investment in their networks and compliance with FCC rules and commitments.

¹⁶ *FNPRM* ¶ 1105.

¹⁷ *Id.*

If the Commission pursues a LOC requirement, then it should be restricted to carriers who have a limited operating history and do not have such a track record of compliance.

D. Competitive Process In Price Cap Territories Where The Incumbent Declines To Make A State-Level Commitment

In its *USF/ICC Transformation Order* the Commission has adopted a framework for USF reform in areas served by price cap carriers such that support will be determined using a combination of a forward-looking broadband cost model and potentially competitive bidding to support deployment of networks providing both voice and broadband service. In each state, each incumbent price cap carrier will be asked to undertake a state-level commitment to provide affordable broadband to all high-cost locations in its service territory in that state, excluding locations served by an unsubsidized competitor, for a model-determined efficient amount of support. In areas where the incumbent declines to make that commitment, the Commission will use a competitive bidding mechanism to distribute support. The Commission anticipates a bidding mechanism that will maximize the extent of robust, scalable broadband service while minimizing the total cost to do so. In the *FNPRM* the Commission seeks comment on aspects of the design of the competitive bidding mechanism.¹⁸

Given the inherent challenges of implementing and administering a competitive bidding mechanism, CenturyLink believes the Commission should place its primary focus on insuring that the model-determined support and corresponding build-out timelines properly incent price cap carriers to assume the state-level commitment. That would allow the Commission the time needed to establish a functional, fair, and reliable competitive bidding mechanism. Widespread refusal of price cap carriers to accept the state-level build obligations will undoubtedly delay

¹⁸ *Id.* ¶ 1190.

CAF Phase II broadband deployments for years, and greatly compromise the long-term success of the program.

Nonetheless, it is likely that not all carriers in all states will accept the state-level build obligations, so the Commission must simultaneously pursue design of a competitive bidding mechanism. Therefore, CenturyLink offers the following comments on a competitive bidding mechanism for distributing CAF support.

1. Overall Design Of The Competitive Bidding Process

In order to minimize the costs of CAF support and maximize the goals of universal service for voice and broadband, there should not be more than one provider receiving CAF support for a given area.¹⁹

2. Framework For Awarding Support Under Competitive Bidding

a. Identifying Geographic Areas Eligible For Competitive Bidding

Identifying eligible areas. CenturyLink agrees that areas eligible for CAF Phase II – both the state-level commitment and the competitive bidding mechanism – support should be those census blocks that are identified as high-cost by the model, but not exceedingly high-cost (and thus subject to the Remote Areas Fund), and that do not have the required level of broadband from an unsubsidized provider. With respect to both CAF Phase I and CAF Phase II support the Commission should ensure that areas that are determined to be served by an unsubsidized provider and thus ineligible for CAF support are appropriately defined. Those areas should not include areas in which an unsubsidized provider is not able to provide complete, or near complete, coverage of the locations within the area. If an unsubsidized provider cannot provide broadband to certain locations in an area, but that area is deemed served, those locations will be

¹⁹ See FCC, Connecting America: The National Broadband Plan at 145.

denied CAF support for broadband service. This is especially problematic where significant portions of the area are not served by the unsubsidized provider and where technologies that require line of sight capabilities (like fixed wireless) result in service to one location, but not the next. Consequently, the Commission should define high-cost areas in which unsubsidized competitors are not capable of ubiquitous or near ubiquitous coverage as unserved and eligible for CAF Phase I and Phase II support.

Minimum size unit for bidding and support. Individual census blocks or census tracts are too small to be practical as a bidding area. Instead, census blocks should be aggregated into larger bidding areas.

Prioritizing areas. The Commission should prioritize awards based on a nationwide ranking of the bids that will provide broadband for the most subscribers at the lowest cost.

b. Establishing Bidding And Coverage Units

CenturyLink agrees with the Commission's proposal to assign a number of bidding units to each eligible census block and to do so by basing the number of units in each census block on the number of residential and business locations it contains based on 2010 decennial census data.

c. Maximizing Consumer Benefits

Support should be provided to a single provider for a given area. There should not be duplicative, overlapping support for any area given the limited budget with which the Commission is working to provide support.

Winners of CAF support should be permitted to partner with others to fulfill their service obligations. But, the support recipient should remain liable for any failure to meet those obligations. Any such partnerships should be fully disclosed to the Commission.

d. Term Of Support

The term of support for both the state-level model-determined support and the competitively-awarded support should be designed to permit sufficient time to recoup the network investments that will necessarily be made but will not be covered by CAF support. Larger area, state-level commitments may need to be afforded a longer term than smaller areas. Competitively-bid areas will likely be smaller than corresponding price cap carrier state-level commitment areas.

For any term of competitively-awarded support, the winning bidder should immediately assume the full CAF service obligations for the awarded area that would have applied to the incumbent, including reporting requirements and service metrics, and be required to provide services with its own network. At the same time, the existing provider should be immediately relieved of any carrier-of-last-resort obligations, including any obligation to provide services in the CAF-supported area.

e. Provider Eligibility Requirements

All providers should be subject to the same eligibility requirements. Eligibility requirements should not be different for smaller providers or non-traditional providers, such as government-owned entities. The minimum requirements should be relevant to ensuring that each bidding provider is capable of meeting the public interest requirements associated with the support awarded.

ETC Designation. Providers should be designated as an ETC prior to bidding for CAF support in an auction. This will ensure that bidders are qualified to meet the obligations associated with receiving CAF support and reduce the likelihood of re-auctions.

Certification of financial and technical capability. All bidders should be required to certify that they are financially and technically capable of providing the required service within

the specified timeframe in the geographic areas for which they seek support pursuant to existing federal and state ETC certification requirements.

Eligibility of Carriers Declining a State-Level Commitment Covering the Area. Price-cap ETCs that decline model-determined support should be eligible to participate in the competitive bidding process for support for the same area. It could be the case that the model-determined support for an area was not sufficient to support the incumbent ETC's broadband deployment to the area, but the same ETC could still end up being the lowest bidder in an auction. Allowing price cap carriers to bid in the auction effectively promotes the public interest. If price cap carriers are excluded, consumers will lose out on a potential provider who could have met the CAF obligations at the lowest cost for an area.

f. Public Interest Obligations

Service performance requirements and measurement. Centurylink agrees that performance requirements for recipients of support awarded through this competitive bidding process should be the same as those required of providers who accept model-determined support. And, the Commission should prioritize awarding support to the bidder that will deploy broadband to the most subscribers at the lowest cost while providing the broadband performance requirements sought by the Commission.

Requesting locations. CenturyLink agrees that support recipients should be required to provide supported service to as many locations in the support area as request service during the term of support.

III. CONCLUSION

The Commission has admirably risen to the challenge of reforming the high-cost universal service program to promote universal availability of broadband services. While the overarching framework has now been set out, there are numerous details still to be identified,

worked through, and ultimately finalized to see this reform through to successful fruition. CenturyLink appreciates the opportunity to continue to be a voice in that process, and looks forward to participating in the realization of these reform efforts to bring the benefits of broadband service to all Americans.

Respectfully submitted,

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