

**Before the
Federal Communications Commission
Washington, D.C. 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 A 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 THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (“USTelecom”)¹ is pleased to submit these comments in response to the Public Notice released by the Wireline Competition Bureau on June 27, 2012,² seeking comments on CenturyLink’s Petition for Limited Waiver of Certain High-Cost Universal Service Rules (“*Petition*”).³ CenturyLink seeks a limited waiver of section

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² See Public Notice *Wireline Competition Bureau Seeks Comment On CenturyLink Petition for Limited Waiver of Certain High-Cost Universal Service Rules*, DA 12-1007 (rel. June 27, 2012).

³ CenturyLink Petition for Waiver, WC Docket No. 10-90 et al. (filed June 26, 2012) (Petition); *see also Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and

54.312(b) of the Commission's rules, which, among other things, provides that recipients of Connect America Fund Phase I (CAF I) incremental support must deploy broadband to locations identified as unserved by fixed broadband on the then-current version of the National Broadband Map, maintained by the National Telecommunications and Information Administration (NTIA). In particular, CenturyLink seeks a waiver so that it may deploy to locations within specified areas that are shown on the National Broadband Map (NBM) as served by fixed wireless Internet service providers (WISPs), but which CenturyLink contends are not fully served within the meaning of the CAF I program by those fixed wireless.⁴

USTelecom recommends prompt approval of the CenturyLink *Petition*. Should other CAF I recipients present comparable information or other information offering good cause for a waiver, USTelecom also recommends that the Wireline Competition Bureau (Bureau) provide relief to them as well. Failure to do so would subvert the goals of the CAF program by shortchanging consumers in areas that would otherwise be eligible for CAF I funding to provide robust and affordable broadband service to all consumers in those areas. The “[m]ore than 83% of the approximately 18 million Americans who lack access to fixed broadband live in price cap study areas”⁵ can begin to be served if ILECs can better utilize the opportunity provided by the CAF I process. Where WISPs are actually providing service more analogous to satellite service rather than fixed broadband, the Commission should follow the precedent in the *USF-ICC Transformation Order*, and grant the requested waiver so that all customers in the areas that are not fully served may receive the benefits of broadband using CAF I funding.

Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (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. 18, 2011); 47 C.F.R. § 54.312(b).

⁴ See *Petition* at 1.

⁵ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17712, para. 127.

I. WISP Coverage Should be Independently Verified Before CAF I Funding is Denied

Denying the ability of an ETC to use CAF I funding based on questionable information about the geographic coverage provided by an unsubsidized broadband provider, in the instant case, a WISP, is contrary to the Commission's goal to extend broadband to unserved areas as stated in the *USF/ICC Transformation Order*.⁶ To determine which areas are unserved by a fixed broadband provider capable of meeting particular service attributes, the Commission relies on the NBM maintained by NTIA. However, NTIA acknowledges the imperfections of the NBM:

Notwithstanding the validation process, NTIA cannot guarantee the accuracy of all data. Furthermore, broadband deployment in the United States is continually changing and developing. Therefore, the biannual SBDD [*define*] data release represents a best-efforts snapshot of the state of broadband deployment at a particular time.[Emphasis added]⁷

The *Petition* offers several concrete examples of areas in which the NBM is clearly inaccurate.⁸ CAF I is a one-time opportunity to bring broadband to many areas that are currently unserved. This opportunity should not be wasted because of inaccurate mapping data. The Bureau should permit CenturyLink and similarly situated ILECs to spend CAF I funds on any community that lies within a state that has not independently verified WISP coverage areas shown in the NBM, and objective indicia demonstrate that the WISP could not plausibly serve the areas that the NBM shows it to cover.

⁶ See *USF/ICC Transformation Order* at page 10 "The goals are: (2) [e]nsure universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions."

⁷ See "About National Broadband Map," [<http://www.broadbandmap.gov/about>], last visited July 5, 2012.

⁸ See *Petition* at page 5.

II. CAF I Support Should Be Available Where Existing Providers Impose Unusually High Retail Prices or Stringent Data Caps

Consumers should not be denied robust broadband service merely because they reside in an area in which a WISP provides service that is inadequate, or only markets to business customers, or has unaffordable rates. The Commission specifically addressed and excluded satellite broadband providers from consideration for the same fundamental reasons,⁹ but did not specifically discuss WISPs.

As noted in the *Petition*, WISPs “lack the capacity to accommodate significant increases in traffic or customers within their service areas.”¹⁰ The problem is exacerbated during times when, for example, schoolchildren doing their homework after school attempt to use bandwidth-intensive services that cannot be accommodated because of their need to share the same spectrum resources. Moreover, WISPs operating in rural areas often cannot find appropriate buildings to which to attach cell sites, and their operation on unlicensed spectrum can also prevent expanded service. Further, WISP services generally do no work absent a line of sight between the customer and the provider’s antenna since WISPs commonly use unlicensed spectrum at such high frequencies that they cannot reliably penetrate ubiquitous obstacles such as trees, buildings, hills, or valley walls.¹¹

Many WISPs also impose on their users high restrictive data caps of less than 25 GB per month. Because of their capacity constraints, this is a reasonable and necessary practice but, like satellite broadband, it is an inadequate level of service to deny customers in those areas the benefits of the broadband network that would be built using CAF I funding. As noted in a prior

⁹ See *USF/ICC Transformation Order* at para. 104.

¹⁰ See *Petition* at page 8.

¹¹ *Id* at page 10.

filing from CenturyLink, the average user of broadband Internet consumes around 25GB per month, so service to a great many customers of WISPs with such caps is constrained by them.¹² Consumers would be harmed by not providing CAF I funding to ILECs to build out technologically superior broadband service in areas served by WISPs with such data caps.

The *Petition* also reasonably proposes to allow CAF I support to be used where WISPs impose an aggregate charge of at least \$720 on new subscribers for their first year of service. This pricing level is relatively high on an absolute basis but also should be viewed in the context of the level of service and service quality offered by WISPs. As noted above, like satellite providers, WISPs often have capacity caps and service quality issues, including unpredictable degradation from third-party interference from common devices such as cordless phones, garage door openers and microwave ovens. The sustained speeds they offer, particularly during busy times, also tend to be slower than those offered by ILECs, and certainly slower than the 4 Mbps downstream standard required of future recipients of federal funding.

Finally, WISPs may choose to serve only business customers, and not provide service to residential customers in need of broadband service. While this is a perfectly reasonable business decision, residential customers in those areas should not be denied the opportunity to subscribe to broadband service because of the presence of a WISP that does not offer them service.

III. Conclusion

The *Petition*, which seeks a limited waiver of section 54.312(b) of the Commission's rules, should be granted promptly and the Bureau should provide the same relief to other CAF I recipients upon a similar showing. Grant of the *Petition* will best serve the goals of the Commission's *USF/ICC Transformation Order* by allowing price cap ILECs to use CAF I

¹² See Letter from Melissa Newman, CenturyLink, to Marlene H. Dortch, FCC, WC Docket Nos. 10-90 *et al.*, at 2 & n. 2 (filed Mar. 30, 2012).

funding to provide robust and affordable broadband service to rural households that may be located in areas where some customers may be served by WISPs, but other customers are essentially unserved.

Respectfully submitted,

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