Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Connect America Fund | ) | WC Docket No. 10-90 |
| | ) | |
| High-Cost Universal Service Support | ) | WC Docket No. 05-337 |

**REPLY COMMENTS OF CENTURYLINK**
**IN SUPPORT OF WINDSTREAM'S PETITION FOR WAIVER**

CenturyLink submits these reply comments in response to the Windstream petition for waiver and the comments thereto.[1] CenturyLink supports the petition and disagrees with comments opposing it. The Commission should grant Windstream's petition because it appropriately furthers the Commission's CAF Phase I incremental support objective of deploying fixed broadband to unserved areas quickly. The Commission should not repurpose any unclaimed CAF Phase I incremental support to the Mobility Fund, but should ensure that those funds continue to be used to spur deployment of fixed broadband quickly to unserved locations. Nor should the Commission mandate interconnection as a condition of granting Windstream's petition. Finally, the Commission should clarify the service obligations associated with receiving CAF Phase I incremental support.

***The Commission Should Grant Windstream's Petition Because It Furthers The Commission's CAF Phase I Incremental Support Objectives.*** Windstream seeks a waiver in

[1] Windstream Election and Petition for Waiver, WC Docket Nos. 10-90, 05-337, filed July 24, 2012. Public Notice, DA 12-1181, rel. July 25, 2012. Oppositions were filed by American Cable Association, Mediacom Telephony, National Cable & Telecommunications Association, Sprint Nextel Corporation, United States Cellular Corporation (USCC), Wireless Internet Service Providers Association (WISPA). Supporting Comments filed by ADTRAN, Inc., Frontier Communications Corporation, Independent Telephone & Telecommunications Alliance, Telecommunications Industry Association, United States Telecom Association. AT&T took no position on the petition.

order to be able to use the CAF Phase I incremental support it has been allocated to deploy broadband to unserved areas. The waiver requested is wholly consistent with the over-arching goals of that support. In creating the incremental support fund the Commission recognized that over 83% of the approximately 18 million Americans without access to fixed broadband live in price cap carrier service areas.[2] CAF Phase I incremental support was specifically designed to enable price cap carriers to extend fixed broadband to unserved locations in their service areas. That is all Windstream is seeking to do.

The Commission designed CAF Phase I incremental support to help price cap carriers get broadband to unserved locations *quickly* -- sooner rather than later. Inflexible rules that leave that money unused indefinitely do nothing to accomplish this objective. The Commission should grant Windstream's petition to enable CAF Phase I incremental support to do what it was designed to -- get fixed broadband to unserved locations in price cap carrier service areas *now*.

---

[2] *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, 26 FCC Rcd 17663, 17712 ¶ 127 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*), *Order Clarifying Rules*, 27 FCC Rcd 605 (rel. Feb. 3, 2012) (*Clarification Order*), Erratum to *USF/ICC Transformation Order* (rel. Feb. 6, 2012), Application for Review pending, USCC, *et al.,* filed Mar. 5, 2012, *Further Clarification Order,* DA 12-298, 27 FCC Rcd 2142 (2012), Erratum to *Clarification Order* (rel. Mar. 30, 2012), Second Erratum to *USF/ICC Transformation Order*, DA 12-594 (rel. Apr. 16, 2012), *pets. for recon. granted in part and denied in part,* Second Order on Recon., FCC 12-47, 27 FCC Rcd 4648 (2012), *pet. for rev., Windstream v. FCC* (10th Cir. No. 12-9575); Third Order on Recon., FCC 12-52, 27 FCC Rcd 5622 (2012), Erratum to *Second Order on Recon.* (rel. June 1, 2012), *Order Clarifying Rules*, DA 12-870, 27 FCC Rcd 5986 (2012), Erratum to *Order Clarifying Rules* (rel. June 12, 2012), Second Report and Order, FCC 12-70, 27 FCC Rcd 7856 (rel. June 27, 2012), Fourth Order on Recon., FCC 12-82 (rel. July 18, 2012), *Order Clarifying Rules*, DA 12-1155 (rel. July 18, 2012), *pets. for rev. of USF/ICC Transformation Order pending, sub nom. In re: FCC 11-161* (10th Cir. No. 11-9900, Dec. 16, 2011).

***Unclaimed CAF Phase I Incremental Support Should Not Be Repurposed To The Mobility Fund.*** Nor does CenturyLink agree with the USCC's proposal that the unclaimed CAF Phase I incremental support should be moved to the Mobility Fund.[3] CAF Phase I incremental support was intended to get fixed broadband to unserved locations quickly, and that should continue to be the intended purpose of any unused CAF Phase I incremental support. The customers living in those areas should not be left behind. The fact that some of the initial parameters the Commission put in place for use of CAF Phase I incremental support have limited price-cap carriers' ability to claim that support does not mean that the Commission should give up on its goal of quickly getting fixed broadband deployed to unserved locations. Indeed, the Commission's goals and policy decisions should not be revisited in a waiver proceeding. Instead, the Commission should maintain its objectives for CAF Phase I incremental support but reconsider the parameters hindering accomplishment of those objectives and make appropriate adjustments to effectively accomplish those objectives.

***The Commission Should Not Mandate Interconnection As A Condition of Granting Windstream's Petition.*** Further, contrary to the WISPA's view, if the Commission grants Windstream's waiver petition, it should not require Windstream to make its facilities available to unsubsidized competitors on any specified terms as a condition of that grant.[4] CAF Phase I incremental support is intended to make broadband service available to unserved locations in price cap carrier service areas quickly. The focus is to ensure that at least a single provider is making fixed broadband available to these locations. Additional obligations necessarily will increase the cost of deployment and, therefore, run counter to the Commission's primary objective of supporting increased broadband deployment.

---

[3] *See* USCC Comments at 4-6.

[4] *See* WISPA Opposition at 7-9.

As an ILEC, Windstream is already required to permit interconnection at any technically feasible point in their network at just, reasonable and nondiscriminatory rates, terms, and conditions in accord with and subject to the limitations of 47 U.S.C. § 251(c)(2).[5] At the same time, the Commission's current regulatory regime does not require interconnection to support broadband Internet access. As such, any determination by the Commission now to impose such an obligation or any other new interconnection obligation on Windstream as a condition of granting its waiver request would fundamentally change the basis and business decisions on which Windstream made the waiver request. If the Commission had wanted to tie CAF Phase I incremental support to new interconnection obligations, it should have made such a proposal through a formal rule-making process that would have allowed parties notice and an opportunity to be heard on these potentially complex issues.[6]

But, the Commission has nowhere proposed or adopted mandated interconnection as an obligation of CAF support. As such, the Commission has provided no notice of what would be a significant, new, regulatory obligation. If the Commission would have required interconnection as an obligation of CAF Phase I increment support, it would have needed to make that obligation clear upfront, so that a carrier could fully evaluate the additional costs that would be incurred and

---

[5] *See* 47 U.S.C. § 251(c)(2). Additionally, to the extent that Windstream provides telecommunications services over any new facilities, it will be required to make those services available for resale. 47 U.S.C. § 251(c)(4).

[6] "Interconnection" has become an increasingly broad and potentially imprecise term. It can pertain to a variety of communication facilities and infrastructure employing a variety of technologies providing a variety of services for which some combinations of interconnection are not even technically feasible. As such, any adoption of "interconnection" obligations here in the rushed manner WISPA proposes would be unwise and potentially counterproductive to the Commission's CAF Phase I incremental support objectives.

evaluate how those costs affected the business case for deployment and whether those costs outweighed accepting CAF Phase I incremental support in the first instance.[7]

Further, the Commission should not impose any new interconnection obligations on broadband providers as a condition of receiving CAF Phase I incremental support. Interconnection arrangements should be the result of reasonable negotiations between parties. Given the fact that CAF Phase I incremental support is being provided to reach unserved consumers in high-cost, low-density areas, mandating interconnection for support recipients could jeopardize an already fragile business case for broadband deployment.

Still further, the fact that expansion of private fiber infrastructure may be supported to some degree by CAF funds does not suddenly convert that infrastructure to public facilities that should be available to all or in places that are not economically rational for both providers. Nor should it. Fundamentally, WISPA's proposal -- and certainly at this time -- is a request for unnecessary regulation. There is no interconnection market breakdown that needs to be addressed through WISPA's proposed regulation. WISPA has not explained how mandating interconnection between carriers as a condition of CAF Phase I support provides any currently tangible benefit to consumers who currently have no broadband service at all. Nor has WISPA explained how mandating interconnection here would benefit consumers more than simply allowing interconnection arrangements to be negotiated in the marketplace. And imposing such an obligation may well undermine the Commission's efforts to get broadband deployed quickly to unserved locations in the first instance. The Commission is correctly focused at this juncture

[7] In support of its argument for mandated interconnection, WISPA points out that Windstream has agreed to certain interconnection obligations with respect to funds it has received as a broadband stimulus awardee. It should be noted, however, that those applying for stimulus funds were aware of that interconnection requirement from the outset, and thus could consider this obligation in evaluating whether or how to apply for those funds. That situation is quite different from what WISPA is proposing here.

on promoting universal access to fixed broadband by offering support to ensure that at least one carrier is providing broadband service to customers where no provider is otherwise providing that service.

***The Commission Should Clarify The Service Obligations Associated With Receiving CAF Phase I Incremental Support.*** CenturyLink also agrees with AT&T's comments urging the Commission to clarify the service obligations associated with receiving CAF Phase I incremental support.[8] With respect to that advocacy CenturyLink views that the Commission should clarify that

(1) an incremental support recipient should be able to satisfy its obligation to offer broadband service to supported locations of at least 4 Mbps downstream and 1 Mbps upstream by offering a service with higher downstream and upstream speeds and is not required to specifically offer a 4 Mbps downstream/1 Mbps upstream service;

(2) an incremental support recipient may rely on its existing testing locations and monitoring processes to determine and certify that its service meets the minimum speed requirements;

(3) an incremental support recipient's incremental support service obligations cease on July 1, 2016;

(4) an incremental support recipient's service obligations extend geographically only to the locations the recipient identifies as those served through incremental support;

(5) an incremental support recipient should not be subject to the ETC reporting requirements of 47 C.F.R. § 54.313(a);

---

[8] *See* AT&T Comments, *generally*.

(6) states do not have authority to impose any condition or obligation on an incremental support recipient that would hinder the recipient's ability to meet its CAF Phase I incremental support obligations; and

(7) an incremental support recipient can relinquish its ETC designation once it completes its CAF Phase I incremental support deployment.

CenturyLink also agrees with AT&T that all CAF recipient service obligations should be limited to defined high-cost areas, for defined periods of time, and for defined amounts of support.

For the reasons stated above the Commission should grant Windstream's petition without imposing any new interconnection obligations. Additionally, the Commission should continue to use any unclaimed CAF Phase I incremental support to deploy fixed broadband to unserved locations quickly in areas served by price cap carriers, and should clarify the service obligations associated with receipt of that support.

Respectfully submitted,

**CENTURYLINK**

/s/Tiffany West Smink
Tiffany West Smink
Craig J. Brown
Suite 250
1099 New York Avenue, N.W.
Washington, DC 20001
303-992-2506
Tiffany.Smink@CenturyLink.com
Craig.J.Brown@CenturyLink.com

Melissa E. Newman
Jeffrey S. Lanning
Suite 250
1099 New York Avenue, N.W.
Washington, DC 20001
202-429-3120
Melissa.Newman@CenturyLink.com
Jeffrey.S.Lanning@CenturyLink.com

September 10, 2012

Its Attorneys

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY COMMENTS OF CENTURYLINK IN SUPPORT OF WINDSTREAM'S PETITION FOR WAIVER** to be: 1) served via e-mail on Mr. Joseph C. Cavender, Telecommunications Access Policy Division, Wireline Competition Bureau at Joseph.Cavender@fcc.gov and Mr. Charles Tyler, also of the Telecommunications Access Policy Division, Wireline Competition Bureau at Charles.Tyler@fcc.gov; and 2) served via e-mail on the FCC's duplicating contractor, Best Copy & Printing, Inc. at fcc@bcpiweb.com.

/s/ Richard Grozier

September 10, 2012