

November 21, 2013

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Filing by Armstrong Utilities In Response to Certain Price Cap Carrier Objections to Armstrong’s Evidence of Service in Disputed Census Blocks; WC Docket No. 10-90

Ms. Dortch:

On November 4, 2013 several price cap carriers filed objections to some of the evidence offered by Armstrong Utilities, Inc. (“Armstrong”) in its September 26, 2013 opposition to price cap LEC requests for Connect America Fund (“CAF”) Phase I, Round 2 support in those areas served by Armstrong. This *ex parte* filing presents Armstrong’s response to those objections.

As an initial matter, Armstrong agrees with the American Cable Association’s (“ACA”) assertions that recent price cap LEC requests to exclude further evidence is wrong as a matter of law, equity and policy. For the reasons set forth in the ACA’s November 15th *ex parte* filing,¹ the Commission should permit challengers to file additional information or evidence necessary to ensure the record is accurate and complete. Such information includes the following points.

Armstrong Response to CenturyLink Objections

CenturyLink’s November 4th filing² includes assertions in response to Armstrong’s Phase I, Round 2 challenges which are misleading and, at times, simply inaccurate. First, CenturyLink suggests that because the National Broadband Map does not show that Armstrong serves six census blocks in Ohio, the challenge as to those census blocks should be denied.³ This argument

¹ See American Cable Association Ex Parte Filing dated November 15, 2013 (Letter of Mr. Thomas Cohen, Kelley Drye & Warren); WC Docket No. 10-90 (filed Nov. 15, 2013).

² CenturyLink Responses to CAF I Round 2 Challenges; WC Docket No. 10-90 (filed Nov. 4, 2013) (“*CenturyLink Response*”).

³ *Id.* at p. 25.

ignores the fact that the Commission itself recognized that the NBM should not be used as the sole determinative factor when identifying served census blocks.⁴ More importantly, CenturyLink's assertion should be rejected because Armstrong does, in fact, provide broadband service to those areas, and offered evidence of such service in its September 26th filing.⁵ Such evidence included network maps,⁶ and discrete evidence of the number of homes passed, active subscribers and network equipment deployed in such census blocks.⁷ The Commission should look to that evidence, rather than the NBM, when evaluating whether these census blocks are served.

Second, CenturyLink also urges the Commission not to consider the detailed network and subscriber evidence that Armstrong filed as partially redacted due to the confidential nature of the information. This argument fails to account for the fact that the Bureau specifically recognized that confidential information could be submitted in response to price cap carrier elections, and explicitly authorized respondents to redact certain information.⁸ That Armstrong would choose to redact granular evidence concerning its network and subscribers is consistent with industry practice and Commission precedent. The redaction of such information should not be a surprise, and should not delay the Commission in this process. Clearly, the Commission could have issued a protective order if it felt that doing so was necessary. Of course, Armstrong does not object to the Commission initiating a procedure to ensure confidential information is afforded necessary protections, through a protective order or other similar process.

Third, CenturyLink erroneously claims that "Armstrong has not provided any evidence to demonstrate the speeds at which it provides service to customers in the challenged census blocks."⁹ This statement ignores the fact that Armstrong included a certification from its Vice President, Mr. James D. Mitchell, that Armstrong "offers fixed broadband Internet access service of at least 3 Mbps downstream / 768 kbps upstream to current and prospective customers *in the census blocks* listed [in appendices attached to Armstrong's opposition filing]."¹⁰ This certification, which was made under penalty of perjury, constitutes evidence of the minimum speeds at which Armstrong provides service in these disputed areas. In fact, the company offers fixed broadband Internet access service of speeds of as much as 50 Mbps downstream / 5 Mbps upstream in most areas.

⁴ See, e.g., *In the Matter of Connect America Fund*, Report and Order, 28 FCC Rcd 7766 at ¶ 28 (May 22, 2013).

⁵ See Armstrong Utilities' Opposition to Price Cap Carrier Elections for Support Under CAF Phase I, Round 2; WC Docket No. 10-90 (filed Sept. 26, 2013) ("*Armstrong Opposition*").

⁶ *Id.* at Appendix D.

⁷ *Id.* at Appendix B.

⁸ See Public Notice, DA 13-1988, n. 5 (rel. Sept. 26, 2013).

⁹ *CenturyLink Response* at 25.

¹⁰ Certification of James D. Mitchell, Vice President, Armstrong Utilities, filed with *Armstrong Opposition* (Sept. 26, 2013) (emphasis added).

Armstrong Response to Windstream Objections

Windstream's reply filing¹¹ questions whether Armstrong's certification was filed by an officer of the company. The signatory to Armstrong's certificate, Mr. James D. Mitchell, is a Vice President and is an officer of the company. Mr. Mitchell is also the person with knowledge of all of the service and network coverage information included in Armstrong's opposition filing.

Windstream also objects to Armstrong's filing of confidential information under seal.¹² As noted above, Armstrong's decision to redact granular evidence concerning its network and subscribers is consistent with the Bureau's direction, industry practice and Commission precedent. Of course, Armstrong does not object to the Commission initiating a procedure to ensure confidential information is afforded necessary protections, through a protective order or other similar process.

Armstrong Response to Frontier Objections

Frontier Communications Corporation's reply filing also objects to Armstrong's filing of confidential information under seal.¹³ For the reasons stated immediately above, those objections are without merit.

Accordingly, the Commission should reject the price cap LECs' various objections to Armstrong's opposition evidence, and deny those requests seeking CAF Phase I, Round 2 support in those census blocks served by Armstrong. Please contact the undersigned with any questions about this matter. Thank you.

Sincerely,



K.C. Halm

Counsel for Armstrong Utilities, Inc.

cc: Amy Bender
Ryan Yates

¹¹ Reply Comments of Windstream Corporation at 25; WC Docket No. 10-90 (filed Nov. 4, 2013) ("*Windstream Response*").

¹² *Id.* at 26.

¹³ Connect America Fund Phase I Round 2 Challenge Rebuttal of Frontier Communications Corporation at 4; WC Docket No. 10-90 (filed Nov. 4, 2013) ("*Frontier Response*").