

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
CAF Phase II Challenge Process)	WC Docket No. 14-93

**OPPOSITION OF CENTURYLINK TO PETITIONS FOR LIMITED WAIVER OF
CAF PHASE II EVIDENTIARY REQUIREMENT**

CenturyLink submits this opposition to various petitions for waiver of the CAF Phase II evidentiary requirement that a provider challenging that a census block that has been identified as unserved should be deemed served must demonstrate that it provides service or has provided service in the census block to at least one current or former customer.¹ CenturyLink opposes the petitions of the following companies: Allen’s TV Cable Service, Inc., Armstrong Utilities, Inc., Bright House Networks, LLC, Charter Communications Inc., Cox Communications, Inc., Shenandoah Cable Television, LLC, Shentel Communications, Inc., Suddenlink Communications, Vyve Broadband and WaveDivision Holdings, LLC.² The petitions seek to obtain relief by essentially requesting the Bureau apply an evidentiary standard it has already determined to be insufficient for CAF Phase II. As such the Bureau should deny the petitions.

¹ See *Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process*, Public Notice, DA 14-864, WC Docket No. 10-90 (rel. Jun. 20, 2014) at ¶ 9 & n. 18 (requiring that one of the criteria for a census block to be “served” is that the provider has voice and/or broadband customers or previously had voice and/or broadband customers in the census block).

² To the extent that there are additional waiver requests applicable to blocks that have been initially identified as blocks where CenturyLink would be eligible for CAF Phase II support that CenturyLink has not identified, CenturyLink opposes those waiver requests as well. CenturyLink has attempted to identify all of the waiver requests associated with the challenge notices that it has received, but is unsure whether it has successfully done so.

I. The Waiver Petitions Have Not Been Properly Filed

In the first instance, CenturyLink asserts that the waivers are not properly filed. Almost without exception, they appear to be no more than petitions for reconsideration that are both untimely and inappropriate in light of the Bureau's recent denial of a petition for reconsideration filed in this docket on the very same grounds.³ Moreover, while some of the waiver requests were filed in the docket in the form of petitions for waiver, others were discovered only in the course of reviewing the text of the challenge filings. When a waiver request appears solely in the body of a challenge filing, interested parties are not afforded reasonable notice and opportunity to respond to the waiver request.

II. The Petitioners Have Not Demonstrated Good Cause To Grant The Requested Waivers

In any event, the waivers are also substantively deficient and should be denied. In accord with Commission Rule 1.3 the Commission may waive any of its regulations when good cause is demonstrated. To show good cause a carrier must demonstrate that (1) there are special circumstances warranting deviation from the general rule and (2) waiver will serve the public interest.⁴ Petitioners have not demonstrated, however, that there are special circumstances warranting deviation from the evidentiary standard nor are the requested waivers demonstrably in the public interest.

³ *In the Matter of Connect America Fund*, Order, DA 14-1169, WC Docket No. 10-90 (rel. Aug. 11, 2014).

⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

A. The Bureau Has Appropriately Determined That Providers Must Demonstrate That They Have A Current or Former Customer in A Census Block For It To Be Deemed as Served.

First, the Bureau has made a reasoned decision that in this CAF Phase II challenge process in order to have sufficient evidence that a census block is “served” and thus CAF Phase II funding is not available for that census block that a provider must demonstrate that it has or had at least one customer in the challenged census block. In this manner the provider can demonstrate that at least one consumer has found either his voice or broadband service – or both – to be a reasonable purchase. It demonstrates that the provider has sufficient plant in the census block that it can actually provide service to at least one consumer in the census block. In the absence of such a simple demonstration, the Bureau cannot conclude that consumers in the census block are served.

These are challenges where review of the National Broadband Map and the provider’s Form 477 submissions reflect that the provider does not serve the census block. The Bureau has determined that to overcome these indicators that the census block is not served, the provider must demonstrate that it serves a single customer in the census block, along with other demonstrations of having available and marketing the requisite broadband and voice services. In CAF I there was an emphasis on targeting support to unambiguously unserved areas. But, for CAF II there must be a shift toward providing support to better ensure that customers are not left behind in this process of enabling universal access to broadband services. Areas where an unsubsidized competitor cannot demonstrate that it has a current or former customer of its voice or broadband services are areas that are properly deemed as unserved for CAF Phase II purposes.

B. Petitioners Have Not Demonstrated Special Circumstances; They Have Only Asked For The Same Relief That The Bureau Has Already Denied.

Second, the petitioners have not demonstrated special circumstances that would warrant that the Bureau deviate from its established evidentiary standard. Fundamentally, these waiver petitions are another request that the Bureau reconsider – again – its decision regarding this evidentiary standard. Petitioners cannot demonstrate special circumstances where the Bureau has already determined that evidence that an area is serviceable is not sufficient to demonstrate the census block is served. The petitioners identify certain reasons that may contribute to their inability to identify current or former customers, including that these census blocks often have a very low population with few potential customers, that the customers may not want broadband or it may not be affordable, or that these census blocks have newly constructed areas or upgraded service where residents have not yet ordered service. But, the fact that there may be a variety of reasons as to why the petitioners have no current or former customers in the challenged census blocks does not demonstrate that these census blocks are served.

As addressed specifically for each petitioner below, the arguments raised simply cannot sufficiently demonstrate that the petitioners are providing service in the challenged census blocks. If there are consumers in the census block but they are not purchasing voice or broadband service from the provider, one is left to wonder why not. Are there line extension fees that make purchasing the provider's service unaffordable? Are the services themselves not affordable? At base, if consumers are not taking an available service, how is the area served?

If there are no consumers in the census block to take service, then absent abandoned locations, there should not be locations available for CAF Phase II funding. To the extent that

such funding is available, the question remains as to why, and it remains unclear how a provider can be viewed as serving an area with no consumers. Thus, the circumstances raised by the petitioners are not special circumstances warranting relief.

C. Granting These Waivers Would Not Serve The Public Interest

Third, deviating from the established evidentiary standard in these instances will not serve the public interest as the only thing that can be definitively concluded from these waiver petitions is that these petitioners are not providing service to any consumers in these census blocks. In short, the consumers in these census blocks are already being left behind.

Determining that these census blocks would be ineligible for CAF Phase II support would only serve to perpetuate this situation in these census blocks and runs counter to the ultimate goal of CAF Phase II.

III. There Are No Additional Circumstances Raised In the Specific Waiver Requests That Warrant Granting The Requested Relief

In this section CenturyLink addresses the companies' specific requests for waiver.

Allen's TV Cable Service, Inc.

Within its written statement included as supporting evidence for its Form 505 #2 filing, Allen's requests a waiver for 14 census blocks that have been identified as unserved or underserved. Allen's seeks re-categorization of the census blocks as served by it on the grounds that for all of the census blocks Allen's has service in adjacent blocks and is available to serve locations in these census blocks, and for many of the census blocks there are no locations. Allen's also asserts that in some of the census blocks it previously had customers, but does not identify which census blocks.

To the extent that Allen's asserts that it has plant that could serve locations in these census blocks, CenturyLink submits that is not a special circumstance warranting relief as the

Bureau has already determined that such a showing is not sufficient to warrant treating the census block as served. This is nothing more than a request to reconsider the Bureau's prior decision for a second time.

To the extent that Allen's is asserting that some of these blocks should not be eligible for CAF Phase II support because there are no locations in those census blocks to be served, that issue should go to the amount of funding that is available for the census block, but does not warrant a determination that the area is served.

To the extent Allen's is asserting that it has former customers in these census blocks but has not identified which ones or provided any other evidence of that former service this is not sufficient permit deviation from the evidentiary standard. The Bureau does not have sufficient information as to which blocks are implicated to consider this merits of this assertion.

Armstrong Utilities, Inc.

In the cover letter to its Form 505 filing Armstrong asserts that it is separately filing a waiver request to support its challenge that 647 census blocks it has identified it can serve, although apparently it cannot produce evidence of current or former customers for these census blocks. CenturyLink has been unable to locate the waiver petition, however, and thus is unable to specifically respond to the petition other than to oppose it.

Bright House Networks

Bright House includes as an attachment to its Form 505-2 a petition for limited waiver to treat 32 serviceable census blocks where it has plant, is actively marketing, but has no current or former broadband or voice customers as served. This does nothing more than seek reimplementaion of a standard the Bureau has already determined is not sufficient for CAF

Phase II. The petition notes that Bright House “does have cable customers in these areas.”⁵ But, it does not identify which specific census blocks, provide evidence of those customers, or otherwise argue that these customers should be considered as evidence that it serves these census blocks. As such, the assertion regarding cable customers is insufficient to demonstrate special circumstances.

Charter Communications

Charter includes as an attachment to its Form 505-2 a petition for limited waiver to treat 106 serviceable census blocks where it has plant, is actively marketing, but has no current or former customers as served. As with the other petitions, this does nothing more than seek reimplementaion of a standard the Bureau has already determined is not sufficient for CAF Phase II. The fact that there may be a variety of reasons as to why Charter has no current or former customers in these census blocks does not demonstrate that these census blocks are served. Charter also makes a passing reference to having cable customers in many of these census blocks, but does not argue that this should support its request for waiver relief.

Cox Communications

In a separately filed request for waiver Cox seeks a waiver to allow 506 census blocks where Cox could not match a billing address with a serviceable address as nonetheless served by Cox. CenturyLink respectfully submits that Cox’s inability to use its systems to determine whether an address it bills corresponds with an address it can serve in a census block, that situation should not warrant permission to treat the census block as served. Cox is also requesting that census blocks in which it has plant in housing developments that are unfinished and with no identified development resumption date be treat as served. The possibility that the

⁵ Bright House Petition for Limited Waiver of the CAF Phase II Evidentiary Requirement, ¶ 4.

development might be completed someday and house consumers is not sufficient to deem the census block as served. The future is too uncertain. And, to the extent there are no locations to be served it would seem that this is an issue of the funding that should be available, but does not warrant a determination that the census block is served.

Shenandoah Cable Television (Shentel)

In its petition for limited waiver filed as an attachment to its Form 505-2, Shentel seeks treatment of 93 serviceable census blocks where it has plant, is actively marketing, but has no current or former broadband or voice customers as served. Of these 93 census blocks 34 are in census blocks where Shentel has recently upgraded service that began launch on August 4, 2014 and 16 are census blocks where Shentel will be launching upgrade service in October. Shentel also argues that for some of the census blocks it has only acquired systems in the last eighteen months to five years so that it does not have information regarding former customers prior to those acquisitions.

CenturyLink submits that Shentel's circumstances do not warrant special relief. The fact that Shentel is launching upgraded service in these census blocks suggest that Shentel has been offering other service in these census block for sometime prior to the launch of these upgraded services and yet it still cannot demonstrate a former or current customer of any voice or broadband service it offers. Additionally, for the systems that Shentel has acquired it has had at least eighteen months and as much as five years in which it could have records of former customers and yet cannot identify any former customers in the census blocks it is challenging. These circumstances raise questions as to why Shentel has no current or former customers in these census blocks, but do not demonstrate that the census blocks should be treated as served.

Shentel Communications

In its petition for limited waiver filed as an attachment to its Form 505-2, Shentel seeks treatment of 14 serviceable census blocks where it has plant, is actively marketing, but has no current or former broadband or voice customers as served. CenturyLink submits that Shentel is doing nothing more than seeking reimplementaion of a standard the Bureau has already determined is not sufficient for CAF Phase II.

Suddenlink Communications

In its petition for limited waiver filed as an attachment to its Form 505-2, Suddenlink seeks treatment of 651 serviceable census blocks where it has plant, is actively marketing, but has no current or former broadband or voice customers as served. CenturyLink submits that Suddenlink is doing nothing more than seeking reimplementaion of a standard the Bureau has already determined is not sufficient for CAF Phase II.

Vyve Broadband

In its petition for limited waiver filed as an attachment to its Form 505-2, Vyve seeks treatment of 645 serviceable census blocks where it has plant, is actively marketing, but has no current or former broadband or voice customers as served. Vyve states that it “does not have current customers in these areas because it has only recently acquired, and upgraded the facilities, of many of the properties at issue.”⁶ CenturyLink submits that even if recent acquisition and newly upgraded facilities constituted special circumstances – which they do not – this vague statement which does not state how recently the acquisitions occurred or identify the census blocks to which the statement apply is insufficient to establish special circumstances to

⁶ Petition for Limited Waiver of CAF Phase II Evidentiary Requirement of Vyve Broadband ¶ 4.

treat all 645 census blocks as served. Vyve is doing nothing more than seeking reimplementa-
tion of a standard the Bureau has already determined is not sufficient for CAF Phase II.

WaveDivision Holdings

In its petition for limited waiver filed as an attachment to its Form 505-2, WaveDivision
seeks treatment of 230 serviceable census blocks where it has plant, is actively marketing, but
has no current or former broadband or voice customers as served. CenturyLink submits that
WaveDivision is doing nothing more than seeking reimplementa-
tion of a standard the Bureau
has already determined is not sufficient for CAF Phase II.

IV. Conclusion

For these reasons, CenturyLink requests that the Bureau deny the requested waiver relief.

Respectfully submitted,

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