

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**REPLY TO
CENTURYLINK, US TELECOM AND WINDSTREAM OPPOSITION
TO SUDDENLINK’S REQUEST FOR WAIVER OF THE
CAF PHASE II EVIDENTIARY REQUIREMENT**

Cequel Communications, LLC d/b/a Suddenlink (“Suddenlink”) hereby replies to the oppositions to Suddenlink’s waiver request filed by the United States Telecom Association (“USTelecom”), CenturyLink and Windstream, in the above-referenced docket. USTelecom, CenturyLink and Windstream (the “Opposing ILECs”) each filed oppositions on August 25 to Suddenlink’s petition to waive the Commission’s evidentiary requirement that a challenging party in the Connect America Fund (“CAF”) Phase II proceeding produce evidence of current or former customers in order to demonstrate that a census block is served.¹

The Opposing ILECs’ arguments mischaracterize the scope and nature of Suddenlink’s request for relief and offer no evidence to rebut or disprove the showing made in Suddenlink’s waiver request. For these reasons, the Opposing ILECs’ oppositions should be denied and the Bureau should grant Suddenlink’s waiver request in full.

The Opposing ILECs’ pleadings set forth the same basic arguments. First, the Opposing

¹ The Opposing ILECs did not provide any notice of their opposition filing to Suddenlink. Nor did the Opposing ILECs serve a copy of their opposition filing on Suddenlink. As such, Suddenlink had no actual (or constructive) notice of the opposition until it was posted to the Commission’s electronic filing system on August 26. This pleading is filed five business days following posting of the pleading and should be treated as timely filed.

ILECs argue that the waiver request is simply a request for further reconsideration of the Bureau's June 20 Public Notice, and that the Bureau has already made a final determination on the scope of this evidentiary standard.² Second, the Opposing ILECs argue that Suddenlink does not offer sufficient evidence for the Bureau to waive the evidentiary standard.³

These arguments fail for several reasons. As to the first argument, the waiver petition was clearly framed and presented as a request that the Commission waive the *application of the rule* in this specific circumstance, as applied to Suddenlink. The waiver request was not framed as (either explicitly or implicitly) a request for further reconsideration of the evidentiary rule, as the Opposing ILECs have argued.⁴ To the contrary, Suddenlink's waiver request offers *specific evidence* of census blocks served by unsubsidized competitors that have deployed broadband facilities in these areas and are ready to serve customers upon request.⁵ Further, the waiver request seeks relief based upon evidence that was not considered in the Bureau's prior decision. As such, the waiver request is not a request for further reconsideration of the Bureau's evidentiary rule, but is instead a request to *waive the application of the rule* as applied to the specific facts and evidence presented by Suddenlink.

As to the Opposing ILECs' alternative argument, that Suddenlink has not demonstrated sufficient evidence or good cause to waive the rule, the Opposing ILECs' offer nothing but conjecture and skepticism as to the factual assertions made in the waiver request. Tellingly, the Opposing ILECs present no rebuttal evidence, or even attempt to show, that the census blocks identified by Suddenlink are not, in fact, served by the company. Nor do the Opposing ILECs offer any evidence to rebut or disprove the assertions made in the factual statement filed in

² See CenturyLink Opp. at 4, US Telecom Opp. at 2, and Windstream Opp. at 1.

³ CenturyLink Opp. at 4-10, US Telecom Opp. at 3, and Windstream Opp. at 4.

⁴ *Id.*

⁵ Suddenlink Waiver at 3-4.

conjunction with the waiver request, which establishes that Suddenlink has deployed facilities in the block and can provide service upon reasonable request.⁶ Instead, the Opposing ILECs attempt to simply cast doubt upon the facts supporting the waiver by making unsupported assertions and claims about the validity of data in Suddenlink’s Form 505-2 and accompanying waiver. Finally, Windstream’s statement that Suddenlink did not assert that they are willing and able to provision broadband within seven to ten days is patently false. Suddenlink made that very representation on pages 3-4 of its waiver request.

The Commission rules allow it “at any time” to waive requirements for good cause.⁷ Further, the D.C. Circuit has held that “an agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.”⁸ And, it is well accepted that the Commission may waive its rules if “particular facts would make strict compliance inconsistent with the public interest.”⁹

As demonstrated in Suddenlink’s waiver request, grant of this waiver is in the public interest because the company has, through expenditure of its own private capital, deployed network facilities to provide broadband and voice services that are available upon reasonable request in the census blocks identified on the company’s Form 505-2. The Commission has already recognized that directing CAF subsidies to areas already served by an unsubsidized competitor is an inefficient use of public resources and harms competition.¹⁰ Accordingly, good cause exists to grant this waiver request.

⁶ See Suddenlink Waiver Request at 3-4; see also Suddenlink Factual Statement at 1-2.

⁷ See 47 C.F.R. § 1.3.

⁸ *Keller Comms. v. FCC*, 130 F.3d 1073, 1076 (D.C. Cir. 1997).

⁹ *Id.* (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

¹⁰ See *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, 17,670, 17,701, 17,722–23, 17,767–68, ¶¶ 11, 103, 149–50, 281–84 (2011).

For the foregoing reasons the Commission should deny the Opposing ILECs' opposition and grant the limited waiver of the Bureau's decision to require evidence of current or former customers to show that a census block is served filed by Suddenlink.

Respectfully submitted,

/s/ K.C. Halm

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