**BEFORE THE PUBLIC SERVICE COMMISSION**
**OF THE STATE OF MISSOURI**

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| In the Matter of a Repository Case in Which to Gather Information About the Lifeline Program and Evaluate the Purposes and Goals of the Missouri Universal Service Fund | Case No. TW-2014-0012 |

**RESPONSE OF THE MISSOURI CABLE TELECOMMUNICATIONS ASSOCIATION TO NOTICES OF COMMUNICATIONS**

Comes now the Missouri Cable Telecommunications Association (the "MCTA") and submits these Comments in response to the Notices of Communication filed in this proceeding on behalf of the Missouri Public Service Commission (the "Commission") on December 23, 2014 and December 29, 2014. The Commission filed the Notices of Communications following *ex parte* communications by CenturyLink with the Commission.

## I. Summary of MCTA's Response

CenturyLink's core advocacy during its *ex parte* communications appears to have been that the *December 2014 Connect America Fund Order*,[1] in which the Federal Communications Commission (the "FCC") made several significant changes to the "Phase II" program of the federal Connect America Fund (the "CAF"), creates an urgent need for the Commission to create a state universal service fund to subsidize broadband service and/or voice service in areas served by price cap ILECs. CenturyLink's arguments, however, do not support the creation of a state universal service fund.[2] Even aside from the significant legal constraints imposed by Missouri law on

[1] *In the Matter of Connect America Fund, ETC Annual Reports and Certifications, Petition of US Telecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks,* WC Docket No. 10-90, WC Docket No. 14-58, WC Docket No. 14-192, Report and Order, FCC 14-190 (rel. December 18, 2014).

[2] Because CenturyLink's *ex parte* communications did not address the FCC's CAF program for rate-of-return ILECs, the MCTA does not address that program in these comments.

universal service funding – *e.g.*, any state high-cost fund would be limited to subsidizing essential local telecommunications service, not broadband service[3] – the creation of a state universal service fund is unnecessary and could deter competition for broadband and voice services. The FCC is in the early stages of transitioning federal high-cost universal funding to subsidize broadband deployment. As the CAF is implemented within the next two years the Commission will have an opportunity to assess the CAF's effects on end users and competing providers' broadband and voice services. At this point, however, there is no evidence demonstrating that the CAF is or will be incapable of targeting areas in need of subsidies, that federal universal service funding will be insufficient to subsidize price cap ILECs, or that competitive forces in Missouri will be inadequate to meet demand in areas ineligible for Phase II support.

## II: The CAF Phase II Program Is in the Early Stages of Implementation

On November 18, 2011, the FCC, seeking to reform both intercarrier compensation and the manner in and purposes for which federal high-cost universal service support would be distributed, released the *Transformation Order*.[4] As regards intercarrier compensation, the FCC announced a seven (7) to nine (9) year period, ultimately ending in July 2020, in which reciprocal compensation and terminating switched access charges would be transitioned to "bill and keep." To replace lost revenues, the FCC announced that ILECs would be able to impose an "Access Recovery Charge" ("ARC").[5] If an ILEC believes it needs additional support, it must petition the FCC and demonstrate a need for such support by a showing of credible evidence, such as through a rate case or other

[3] *See* discussion of this issue in Comments of the MCTA, filed on February 14, 2014 in this proceeding.

[4] *Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663 (2011), *aff'd sub nom, In re FCC 11-161*, ___ F.3d ___, 2014 WL 2142106 (10th Cir. May 23, 2014).

[5] *Transformation Order*, ¶¶ 36-37. The CAF also provides support to ILECs for any otherwise eligible revenue not recovered by the ARC. *Id.*, ¶ 37.

evidentiary hearing.[6]

As concerns federal high-cost universal service support, the *Transformation Order* created the CAF to provide, in relevant part, subsidies in two phases to price cap ILECs for the deployment of broadband services in high-cost areas. In "Phase I," price cap ILECs continued to receive the same levels of federal high-cost funding they received in previous years, and were eligible to receive broadband support in addition to existing federal high-cost universal service support. Phase I provided more than $438 million for wireline broadband deployment to serve 1.6 million people previously lacking broadband connections. Phase I also invested $300 million to expand advanced mobile wireless service. For "Phase II," the FCC initially determined that price cap ILECs would have a right of first refusal to broadband support for high-cost rural areas unserved by unsubsidized competitors providing at least 4 Mbps for downloads and 1Mbps for uploads (4 Mbps/1 Mbps). The *Transformation Order* directed that areas supported by Phase II broadband subsidies would be served with 4 Mbps/1 Mbps, with 6 Mbps/1.5 Mbps to a number of supported locations. High-cost areas for which price cap ILECs would decline Phase II subsidies would be subject to a bidding process in which competitive ETCs could participate. As the FCC reported last year, Phase II will offer nearly $9 billion in broadband subsidies, a nearly 70% increase in annual support for broadband and voice service in areas served by price cap ILECs.[7]

The FCC only recently adopted the cost model for Phase II and is still in the process of evaluating challenges to model-based support. Last month the FCC released the *December 2014 Connect America Fund Order*, announcing several significant changes to the Phase II program.

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[6] *Id.*, ¶¶ 924-27. The FCC also determined that there will be minimum "benchmark" local telephone rates applicable to recipients of CAF support, implemented over a multi-year period ending in 2018. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report And Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order On Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 (rel. June 10, 2014).

[7] "FCC Takes Major Strides Toward Further Expansion of Rural Broadband, Second Phase of Connect America Fund Will Connect Five Million Rural Americans to Broadband," FCC Press Release (April 23, 2014).

First, the FCC decided to require carriers receiving CAF subsidies for fixed broadband service to provide bandwidth of at least 10 Mbps/1 Mbps. Specifically, the FCC decided to exclude from its initial offer of support to price cap ILECs any area served by a subsidized facilities-based terrestrial competitor that offers fixed residential voice and broadband services meeting or exceeding 4 Mbps/1 Mbps.[8] The FCC concluded that high-cost census blocks that are thereby excluded from the initial offer of support – including blocks with service meeting or exceeding the 10 Mbps/1 Mbps speed requirement – would nevertheless be eligible for support in the Phase II competitive bidding process. In addition, the FCC concluded that any area served by an unsubsidized facilities-based terrestrial competitor that offers 10 Mbps/1 Mbps would not be eligible for support in the Phase II competitive bidding process.[9] The foregoing changes in effect provide competitive ETCs with more opportunities to bid for Phase II subsidies, while, by increasing the supported speeds to 10 Mbps/1 Mbps, reducing the number of areas that, because of existing broadband service, would be ineligible for support in the bidding process.

Second, the FCC granted forbearance from federal high-cost universal service obligations in areas where price cap carriers are ineligible to receive CAF support because those areas are low-cost, have unsubsidized competition for broadband services, or are being served by an eligible telecommunications carrier ("ETC") receiving CAF subsidies.[10]

Third, the FCC provided "increased flexibility in the build-out requirement, while still ensuring that support recipients are reaching out to Americans that were previously unserved."[11] Specifically, the FCC increased the term of support for price cap carriers from five (5) years to six (6) years, with an option for a seventh year in certain circumstances. The FCC also allowed adjustments of up to five percent (5%) in the number of locations that must be served in an eligible

[8] This determination will be made using 3 Mbps downstream/768 kbps upstream (3 Mbps/768 kbps) as a proxy for this standard, upon completion of the process for determining census block eligibility.

[9] *December 2014 Connect America Order*, ¶ 4.

census block, with corresponding support reductions.[12]

The FCC currently anticipates that its final determination as to which areas will be eligible for the offer of Phase II support to price cap ILECs will occur early this year. The Phase II competitive bidding process, however, will not occur until 2016.[13] Thus, with respect to the implementation of Phase II, the nation is in only the beginning stages of a lengthy transition in which carriers are deploying broadband services – with or without public subsidies – phasing out intercarrier charges for network access, and otherwise adjusting their business plans and developing new services. Moreover, the FCC's actions underscore the central theme of universal service reform: that universal service subsidies generally are unneeded and may even be harmful to the development of competitive market forces where market forces are anticipated to provide the broadband and voice services that consumers demand. Even aside from the legal issues concerning the regulation of and state jurisdiction concerning broadband services, it is far from clear that there is a need for states to supplement federal universal service support for price cap carriers with subsidies for broadband or voice services.

## III. CenturyLink's *Ex Parte* Arguments Do Not Demonstrate A Need for a State Universal Service Fund

CenturyLink contends that the Commission should create a universal service fund because of the following:

(1) The "gaps" in service in "relatively low cost" areas that will be ineligible for Phase II funding;

(2) The FCC's allowance of adjustments of up to five percent (5%) in the number of

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[10] *Id.*, ¶¶ 3, 50-70.

[11] FCC Increases Rural Broadband Speeds Under Connect America Fund, Rural Consumers Must Receive Broadband Delivering At Least 10 Mbps Downloads, 1 Mbps Uploads from Providers Who Benefit from Connect America Support," FCC Press Release (December 11, 2014).

[12] *December 2014 Connect America Order*, ¶¶ 3, 38-44.

[13] *Id.*, ¶¶ 1, 8, 12.

locations that must be served in an area eligible for Phase II subsidies (*i.e.*, so that only ninety-five percent (95%) of locations in a census block need be served);

(3) "Extremely high cost" areas; *i.e.*, areas whose costs of providing broadband are above the high-cost threshold of the Phase II program; and

(4) Forbearance having been granted to certain price cap carriers from certain ETC obligations.

For the following reasons, however, CenturyLink's arguments do not justify creating a state universal service fund.

<u>The "relatively low cost" areas ineligible for Phase II funding are not demonstrably incapable of attracting competitive broadband services</u>.

In the *December 2014 Connect America Fund Order*, the FCC declined the price cap ILECs' proposal to substitute unserved locations in census blocks ineligible for support for locations in census blocks eligible for support.[14] CenturyLink contends that the FCC's action suggests that states should fund broadband deployment to the unserved locations. However, while the FCC will explore this issue,[15] there is no legitimate case for public subsidies for broadband deployment to low-cost areas or areas otherwise generally subject to unsubsidized competition, and, therefore, ineligible for high-cost support. Stated differently, public subsidies to price cap ILECs in such areas would likely harm rather than support the market forces that otherwise would be attracted to the conditions favorable to providing broadband services to previously unserved locations, *i.e.*, because the locations are low cost or lack subsidized competition.

<u>The FCC adjusted at CenturyLink's request the number of locations to be served in an area eligible for Phase II subsidies</u>.

CenturyLink contends that the FCC's allowance of adjustments of up to five percent (5%) in

[14] *Id.*, ¶ 44.
[15] *Id*.

the number of locations that must be served in an area eligible for Phase II subsidies (*i.e.*, so that only ninety-five percent (95%) of locations in a census block need be served) is a reason to demand state broadband subsidies for the unserved locations. However, CenturyLink advocated such an allowance so that it and other price cap ILECs would have the "increased flexibility" about which it now complains.[16] Moreover, while many matters concerning the implementation of CAF remain uncertain, in CenturyLink's view, Phase I was "an overwhelming success."[17] CenturyLink also has assured that it is ready to invest substantially in broadband deployment based on Phase II funding, including at the 10 Mbps/1 Mbps level.[18] There is no evidence at this point to demonstrate that federal funding and the FCC's other reforms will be insufficient to subsidize broadband deployment, or that if there is a perceived funding shortfall, states should subsidize broadband or voice service. "Extremely high-cost" areas are eligible for broadband service through the Phase II program.

The *Transformation Order* separately established a "Remote Areas Fund" to provide support for "extremely high-cost" areas – *i.e.*, areas above the cost threshold to be created by the FCC's Phase II cost model – and set a budget of "at least" $100 million for such support.[19] In addition, the *Transformation Order* allowed price cap ILECs participating in the Phase II program to serve locations in areas that would be above the extremely high-cost threshold of the program in order to satisfy their build out obligations.[20] The FCC also has concluded that extremely high-cost areas will be eligible for the Phase II competitive bidding process.[21] In addition, the cost threshold that

[16] *See, e.g.*, Comments of CenturyLink, filed August 8, 2014 in Connect America Fund, Universal Service Reform – Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier, Compensation Regime, WC Docket No. 10-90, WT Docket No. 10-208, WC Docket No. 14-58, WC Docket No. 07-135, CC Docket No. 01-92.

[17] Ex parte submitted to FCC by Frontier Communications and CenturyLink, "CAF Phase II: WC Docket No. 10-90" (October 8, 2014).

[18] *See id*.

[19] *Transformation Order*, ¶¶ 533-38.

[20] *Transformation Order*, ¶ 171, n. 279.

[21] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051

determines which blocks are extremely high-cost will be adjusted after conclusion of the FCC's evaluation of challenges to areas eligible for Phase II support.[22] Therefore, it is premature to conclude that extremely high-cost areas will be inadequately served.

The forbearance granted by the FCC does not mean that essential voice services will not be provided.

As discussed above, the FCC granted forbearance from federal high-cost universal service obligations in certain areas in which price cap carriers are ineligible to receive CAF support. Such areas are low-cost, have unsubsidized competition for broadband services, or are being served by an ETC receiving CAF subsidies. Even in those areas, however, ETCs will remain obligated to maintain existing voice services until and unless they receive FCC authorization to discontinue those services. Moreover, they also will remain obligated to provide Lifeline service.[23] In addition, price cap carriers declining Phase II subsidies nevertheless will retain the obligation to offer voice services in census blocks determined to be high-cost or extremely high-cost, and unserved by an unsubsidized competitor, until such carriers are replaced by other ETCs that are required to offer voice and broadband service to fixed locations that meet the Commission's public service obligations.[24] Accordingly, there is no crisis in voice services demonstrating a need for a state universal service fund in Missouri.

## IV. Conclusion

Federal high-cost universal service funding is transitioning to subsidize broadband deployment, the CAF remains in its initial stages and its implementation is just beginning. As Phase II is implemented state regulators and the industry will be able to evaluate quantitatively the effects

(rel. June 10, 2014), ¶¶ 30, 32.

[22] *December 2014 Connect America Fund Order*, ¶ 76, n. 173.

[23] *Id.*, ¶ 51.

[24] *Id.*, ¶ 52.

of the FCC's programs and determine appropriate courses of action with respect to state universal service. At this point, however, there is no evidence demonstrating that the CAF program is or will be incapable of targeting areas in need, that federal universal service funding will be insufficient to subsidize price cap ILECs, or that competitive forces will be inadequate to meet demand in Missouri.

Respectfully submitted,

BLITZ, BARDGETT & DEUTSCH, L.C.

By: /s/ Stephanie S. Bell

Stephanie Bell, #61855
308 East High Street, Suite 301
Jefferson City, MO 65101
Telephone No.: (573) 634-2500
Facsimile No.: (573) 634-3358
E-mail: sbell@bbdlc.com

**CERTIFICATE OF SERVICE**

I hereby certify that true and accurate copies of the above pleading were served electronically, this 26th day of January, 2015, upon the following:

Missouri Public Service Commission Staff
E-mail: staffcounselservice@psc.mo.gov

Office of Public Counsel
E-mail: opcservice@ded.mo.gov

/s/ Stephanie S. Bell
Stephanie S. Bell