

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

In the Matter of)	
)	
)	WC Docket No. 10-90
Connect America Fund)	WC Docket No. 14-93
)	
)	DA 14-1397

Response of Charter Communications, Inc. to Connect America Phase II Challenges

Pursuant to the Commission’s Public Notice, Replies Sought in Connect America Phase II Challenge Process, WC Docket No. 10-90 et al., DA 14-1397 (WCB rel. Sept. 26, 2014) (“Public Notice”), Charter Communications, Inc. (“Charter”) hereby respectfully submits this response to the served-to-unserved challenges filed in this proceeding by CenturyLink, Inc. (“CenturyLink”); Windstream Communications (“Windstream”); FairPoint Communications, Inc. (“FairPoint”); and Consolidated Communications of Texas (“CCI”).

The Public Notice identifies census blocks the Commission had initially designated as ineligible for support under the Connect America Fund (“CAF II”) because they were already served by Charter—but as to which either CenturyLink, Windstream, FairPoint, or CCI has challenged Charter’s provision of service (the “Challenged Blocks”). Charter has undertaken a rigorous review of the Challenged Blocks and of the evidence submitted by the four challengers in support. It has reviewed its databases, pulled past billing data, analyzed maps of its plant and engineering information, as well as queried past records of its marketing campaigns and investigated its online offerings to thousands of representative addresses within the Challenged

Blocks. In addition, it has reviewed and in many cases tested the evidence submitted by the four challengers.

Based on Charter's review, it respectfully responds that the challenges are based on unreliable methods and evidence, and should be denied in their entirety. At a bare minimum, the Commission should deny the challenges with respect to 5,502 of the Challenged Blocks in which Charter is submitting evidence that, even applying conservative methods for identifying the census blocks in which Charter's facilities and customers are located, Charter serves the census blocks with both voice and broadband. Providing CAF II funding in these areas would be inconsistent with the Commission's goals, skew competition, and waste scarce public resources.

First, with respect to at least 1,347 of the Challenged Blocks, Charter has records of current or former customers, as evidenced by billing records and customer bills, and as confirmed by a sampling of website screenshots that Charter is submitting along with the accompanying Declaration of James Daley (hereinafter "Daley Declaration"). *See* Daley Declaration ¶¶ 6-10 & Appendices 505-1(A) & 505-1(B).

Second, there are a further 4,155 Challenged Blocks in which—although Charter cannot confirm via its records that any of its current or former customers are located within the blocks—Charter serves the requisite voice and data services, which Charter has identified through comprehensive review of its engineering maps and billing records, and confirmed by a sampling of marketing materials Charter has sent (or is sending) into the areas and as further confirmed by a sampling of screenshots from Charter's website, which demonstrate offers that customers at representative addresses within those census blocks would see when inquiring regarding service on Charter's website. *See* Daley Declaration ¶¶ 12-16 & Appendices 505-2(A), 505-2(B), 505-2(C), & 505-2(D). As the Commission found in its September 26, 2014 Notice, in many census

blocks where providers have plant deployed and hold themselves out as providing service to the public, “low population density, high poverty, or recent/ongoing deployment” can “explain the lack of a current or former customer.” *See* Public Notice at 3-4. Accordingly, as explained in Charter’s accompanying petition for waiver, the Commission should consider those census blocks likewise “served” for purposes of CAF II support eligibility, and similarly deny the challenges to Charter’s provision of service.

I. RESPONSE TO CENTURYLINK CHALLENGE

The vast majority of the census blocks challenged in this stage of the proceeding were challenged by CenturyLink, which contested the served status of more than 50,000 census blocks across all providers. As discussed below, Century Link’s evidentiary basis for this overbroad challenge is unreliable on its face, and is rebutted by the evidence Charter provides herein. Due to the facial unreliability of the evidenced relied upon by CenturyLink, the Commission should deny CenturyLink’s challenge in its entirety – and at a bare minimum, it should deny CenturyLink’s challenge with respect to the vast majority of census blocks CenturyLink contests, and for which Charter is submitting specific evidence in response in this filing and the accompanying Daley declaration.

A. Voice Service Challenges Based on Third-Party Data

The bulk of CenturyLink’s challenge rests on work product from a vendor, GeoResults, that CenturyLink hired to analyze the availability of competing voice services within 67,702 census blocks. *See* Declaration of Ted Shields, Exhibit 6-1 to CenturyLink Challenge, at 9 (Aug. 14, 2014). As described in the vendor’s declaration, that process involved consulting a vendor-proprietary database of addresses within each census block, then geocoding those addresses and comparing them to the plant locations of various cable and telecommunications providers as

reflected within another of the vendor's proprietary databases, as well as querying a further vendor proprietary database of telephone numbers associated with various addresses and then associating them with the relevant voice provider as reflected in yet another vendor-proprietary database. *Id.* at 14-16.

The proprietary nature of the GeoResults databases prevents any meaningful inquiry into the accuracy or reliability of this process. However, CenturyLink's own filing makes clear that the GeoResults results therein cannot be relied upon: of the census blocks for which CenturyLink retained GeoResults to identify the providers of voice services, "there were another 16,062 census blocks where GeoResults determined that there was insufficient data to determine the provision of voice service to residential locations within those census blocks" but as to which "CenturyLink has confirmed that these are all census blocks in which CenturyLink serves residential customer locations." CenturyLink Challenge, Exhibit 6-1 at 2-3. Put differently, in nearly a quarter of the census blocks that CenturyLink asked GeoResults to review, GeoResults provided CenturyLink with results that CenturyLink knew to be inconsistent with CenturyLink's own business records. Undeterred, however, CenturyLink simply forged ahead and submitted a wide-ranging challenge based on that questionable data, forcing other providers in this proceeding to engage in the time-consuming and expensive process of weeding through thousands of census blocks of highly unreliable results. The practice of using an FCC proceeding and such unreliable data to distract and impose unnecessary costs on competitors is questionable.

The errors in CenturyLink's filing, in this regard, are substantial. In nearly a fifth of the census blocks challenged by CenturyLink—1,192—Charter has records of either a former or current customer. *See* Daley Declaration ¶¶ 6-10, Form 505-1, & Appendix 505-1(A). And in a

further 3,728 of those census blocks, Charter is providing substantial evidence that it serves the area. *See* Daley Declaration ¶¶ 12-16, Form 505-2, & Appendices 505-2(A) through 505-2(D). It may well be that GeoResults' process depends on current phone numbers, and is thus incapable of discerning areas served by competing voice providers who do not have a present customer, but it is difficult to conceive of how its process could have gone so badly awry with respect to the hundreds of census blocks (by Charter's count, 673) in which Charter has active voice customers today. Whatever the cause of its errors, CenturyLink's challenge as to these census blocks should be summarily rejected.

B. Challenges Based on Claimed Website Review

CenturyLink also challenges the provision of broadband service in a number of additional census blocks, claiming that it followed a process of extracting "all addresses in each census block" of interest from a public database, and then entering those addresses into each competing provider's website to ascertain whether broadband service is being offered to those addresses. *See* Declaration of Richard Rousselot, Exhibit 7 to CenturyLink Challenge, at 4-5 (Aug. 14, 2014). CenturyLink claims that its search showed "no broadband service eligibility from the provider at *any* address in [each] census block" CenturyLink is challenging. *Id.* at 2 (emphasis added). Although CenturyLink claims to have retained copies of every screenshot it checked in this manner, *id.* at 5, it filed only a handful of "representative" screenshots along with its challenge, two of them relating to Charter. *See, e.g., id.* at 10-11.¹ As with CenturyLink's

¹ One of those two screenshots does not even show what CenturyLink claims it shows. For reasons not explained, CenturyLink places its reliance on a screenshot that says nothing about service availability or unavailability, but offers "Stuck in a contract? We'll pay your early termination fees up to \$500!" *See* CenturyLink Challenge, Exhibit 7 at 11. However, as the Bureau determined in the CAF I proceeding, a screen shot that directs a consumer "to contact customer service does not establish that service is not offered; it merely means the prospective customer cannot order service online." *See In re Connect America Fund*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on

challenge based on third-party vendor data, the process used and the evidence submitted is so unreliable that the challenge should be denied in its entirety—but at the very least must be denied with respect to all census blocks on Charter’s accompanying Forms 505-1 and 505-2, where Charter’s evidence conclusively refutes CenturyLink’s contentions.

The sheer volume of the census blocks challenged by CenturyLink makes it impractical to seek to replicate the entire exercise that CenturyLink claims to have performed (and CenturyLink’s failure to file the screenshots themselves prevents respondents from reviewing the evidence on which it claims to have relied). Nevertheless, Charter tested CenturyLink’s assertions by querying Charter’s customer-facing website with respect to a sample of addresses within the census blocks challenged by CenturyLink and as to which Charter’s internal records, whether in the form of Charter’s billing and operational databases or plant maps, confirm that Charter serves both broadband and voice to addresses within the census block. *See* Daley Decl. ¶ 15(a). As shown by the non-exhaustive sample screenshots appended to the Daley Declaration as Appendix 505-2(B) and flagged with the “Sample CenturyLink Exhibit 7 Census Block” column, contrary to CenturyLink’s assertions, Charter’s website returns results showing that Charter provides both broadband and voice service to addresses within many of the census blocks in question. *Id.* Charter has not attempted to replicate CenturyLink’s entire claimed exercise and has not tried to test every address in each census block (due to the sheer volume of census blocks at issue), but the results of a mere sampling call into serious question either the thoroughness of the exercise performed by CenturyLink or the accuracy of the data on which it relied to structure its search.

Reconsideration, and Further Notice of Proposed Rulemaking, Docket No. 10-90, 29 FCC Rcd 7051, 7125, ¶ 276 (Jun. 10, 2014). Such flimsy evidence is insufficient to outweigh Charter’s contrary evidence that it provides the requisite broadband and voice services in the census blocks listed on Form 505-1 and 505-2.

In any event, other evidence being submitted along with Charter’s response—such as a sampling of direct mail marketing materials advertising the availability of broadband and voice services to addresses within the census blocks as to which CenturyLink has challenged—demonstrates the availability of Charter’s service. *Id.* ¶ 16 & Appendix 505-2(C). Those records demonstrate that—contrary to CenturyLink’s challenge—Charter not only serves those census blocks challenged but holds itself out to putative customers as ready and willing to do so.²

CenturyLink’s challenge should accordingly be rejected in its entirety, but at a bare minimum be denied with respect to all census blocks listed in Charter’s accompanying Forms 505-1 and 505-2.³

II. RESPONSE TO WINDSTREAM CHALLENGE

Windstream’s challenge to Charter’s provision of service several hundred census blocks should also be rejected in its entirety, or at least with respect to the 552 census blocks listed on Charter’s accompanying Form 505-1 and 505-2. Windstream’s challenge is based on two claims: (1) that Windstream has not, within a 1-year period, ported numbers from its own previous customers to other providers of broadband Internet services, *see* Declaration of Christopher B. Raper ¶¶ 3-5, attachment to Windstream Challenge (Aug. 14, 2014); and (2) an “IP Traffic analysis” in which Windstream utilized the services of an unnamed “well-known third-party vendor” to use “proprietary data analytics algorithms” to geocode IP addresses, which it then cross-referenced against “log data” the same unnamed vendor maintained of Internet traffic, in an attempt to demonstrate whether customers of other Internet Service providers had

² Indeed, Charter also has future marketing campaigns planned within many of these same census blocks. *See* Daley Decl. ¶ 16(b) & Appendix 505-2(D).

³ Although CenturyLink’s challenge also asserts that Charter failed to file certain forms in connection with its provision of voice service, *see* CenturyLink Challenge Exhibits 2 & 4, it cites nothing to support any suggestion that the filing of the forms in question is related in any way to whether an area is served for purposes of CAF II support.

generated Internet traffic from within the challenged census blocks. *See id.* at ¶¶ 6-10. Charter, however, has checked the census blocks challenged by Windstream against its own data and confirmed that it has records of current or former subscribers in 142 of the census blocks challenged, and has other evidence that it serves 410 additional blocks. *See* Forms 505-1 & 505-2 & evidence cited therein.

To begin with, Windstream’s analysis is plainly flawed and cannot be relied upon for any census block it challenges. In census blocks where Charter serves the area but lacks current customers (either because Charter has former customers in the census block, or because customers have not yet availed themselves of Charter’s service options), it is entirely unsurprising that Windstream would not have seen porting or IP traffic activity utilizing the process described. Moreover, even where Charter has current subscribers, the limitations described in Windstream’s process would cause it to miss Charter subscribers that did not port numbers from Windstream upon acquiring Charter’s voice service.

More than 70 percent of new Charter voice customers elect to receive a new telephone number as opposed to porting their existing number. Particularly in rural areas where there are few potential customers in each census block (and thus substantially less churn than in more densely-populated areas), the absence of porting activity to a competing provider within the census block during a one-year period is not a reliable proxy for whether competing providers are present. And, finally, the reliance of Windstream’s process on proprietary methods and an unnamed vendor make it difficult to assess the reliability of its claimed ability accurately to geolocate IP addresses down to the census-block level, or of its claim that the same unnamed vendor’s “URL Request data” is sufficiently representative to be able to determine whether users are generating Internet traffic from particular IP addresses.

In any event, regardless of the limitations of Windstream's flawed process, Charter itself has reliable data, which it utilizes in the regular course of its business, showing where its customers and plant are located, as well as where its advertisements, marketing, and customer-facing website promote the availability of its voice and data services. *See* Forms 505-1 & 505-2 & evidence cited therein. Charter's evidence, submitted herewith, persuasively shows its provision of service in at least 552 of the census blocks challenged by Windstream. Thus, although the unreliability of Windstream's methods should cause the Commission to deny the challenge in its entirety, the challenge should at minimum be denied as to all census blocks listed in Charter's accompanying Forms 505-1 and 505-2.

III. RESPONSE TO FAIRPOINT CHALLENGE

FairPoint's more limited challenge to Charter's provision of service in a few dozen census blocks fares no better. FairPoint's challenge is based on substantially the same process and same vendor as CenturyLink's. *See* Challenge of FairPoint Communications, Attachment at 1-2 (Aug. 14, 2014) (describing GeoResults process). Again, due to the proprietary nature of the GeoResults databases, Charter lacks visibility into how FairPoint's process caused it mistakenly to challenge Charter's provision of service to several of the census blocks at issue.⁴ However, FairPoint's process was clearly flawed, as Charter has records of current or former customers for both voice and data subscribers in 12 of the FairPoint-challenged census blocks, and serves an

⁴ Given that the geographical boundaries of census blocks are available from the United States census bureau, FairPoint's two-step process of instead extracting the addresses from the census blocks, and then geolocating those addresses separately (without, apparently, then checking those coordinates against the coordinates of the census blocks from which they were extracted), may have introduced some potential for error into its process. *See* Challenge of FairPoint Communications, attachment at 1-2 (describing process). In any event, however, irrespective of the source of the error, the proprietary databases of a third-party vendor are unlikely to provide as accurate a description of the location of Charter's customers and plant as Charter's own internal records, which Charter utilizes in the regular course of business to support its billing, marketing, and engineering operations. *See* Daley Decl. ¶¶ 7 & 13(a).

additional 18 census blocks in which it does not have customer records. Supporting evidence, including bills to Charter's current and former subscribers in 12 of the census blocks at issue, as well as marketing materials and websites screenshots pertaining to the other 18, are described in and appended to the accompanying Daley declaration. *See* Forms 505-1 & 505-2 & evidence cited therein.

IV. RESPONSE TO CCI CHALLENGE

Finally, CCI's challenge to Charter's provision of service in 8 census blocks, based on claims that it does not have records of porting telephone numbers from its voice subscribers to Charter in those blocks, should also be rejected as to one of the census blocks at issue. *See* CCI Challenge, Exhibit 1 at 1 (Aug. 14, 2014). As discussed in response to the Windstream challenge above, the limited number of potential customers in these rural census blocks, the consequently lower churn in these blocks, and the fact that Charter does not have current voice customers in several of the challenged census blocks make porting records a poor proxy for service availability. As shown in the accompanying Daley declaration and supporting exhibits, Charter has voice and data customers in one of the eight challenged census blocks. *See* Form 505-1 & Appendix 505-1(A).

CONCLUSION

Charter respectfully requests that the Commission deny the challenges of CenturyLink, Windstream, FairPoint, and CCI.

Respectfully submitted,

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