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NOTICE OF EX PARTE

February 13, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *In the Matters of Petition of the City of Wilson, North Carolina for Preemption of North Carolina General Statutes § 160A-340 et seq*, WCB Docket No. 14-115; *Petition of Electric Power Board of Chattanooga, Tennessee for Preemption of a Portion of Section 7-53-601 of the Tennessee Code Annotated*, WCB Docket No. 14-116

Dear Ms. Dortch:

On February 11, 2015, Melissa Newman of CenturyLink met in separate meetings with Travis Litman of the office of Commissioner Jessica Rosenworcel and with Rebekah Goodheart of the office of Commissioner Mignon Clyburn to discuss the above-captioned proceedings.

In the meetings, CenturyLink discussed the history of municipal overbuilding, which is mostly about costly business failures that have saddled citizens with substantial financial burdens.

For example, in Wilson, NC, the Greenlight enterprise has consistently lost money during its lifespan, with an overall net deficit position of over \$1.2 million as of June 30, 2013.

UTOPIA had over \$500 million in bond financing, has experienced millions of dollars in operating losses every year and has failed to meet projections on customers and revenues, thus requiring it to go back to its member cities for additional financing. The pending deal between UTOPIA and Macquarie, should it succeed, would allow Macquarie to finish building out the UTOPIA FTTH network and operate the network on behalf of the cities for 30 years. It would remain a municipal network, levying a monthly utility fee on the citizens of opt-in cities of around \$25.00 for 30 years.

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In Provo, Utah, where Google bought the network for \$1 but did not take on the associated debt, its citizens are shouldering the \$35 million tax obligation for the failed network.

Consequently, many of the laws adopted were to protect citizens from projects that could very likely increase their taxes. In addition, many of the laws adopted were done so to ensure a level playing field for private investment. For example, the North Carolina statute that the City of Wilson would have the Commission preempt includes requirements that the municipality:

- 160A-340.1(a)(1) Comply with all local, state, and federal laws, regulations, or other requirements applicable to a private communications service provider.
- Not use the powers of a city (e.g., zoning or other monopoly utility service) to require any person, including residents of a particular development, to use or subscribe to any communications service provided by the city-owned communications service provider.
- Provide nondiscriminatory access to private communications service providers to rights-of-way, poles, or conduits.
- Not use other city resources, including PEG channels, to promote the city-owned communications service.
- Not subsidize the provision of communications service with funds from any other non-communications service, operation, or other revenue source, including any funds or revenue generated from electric, gas, water, sewer, or garbage services.

No part of the federal government, including Congress, has the power to require states to create a municipality in the first place, much less permit such a subdivision of the state to take on obligations binding the people of the state against the will of the majority in the state. CenturyLink continues to support the exploration of creative partnerships between incumbents and municipalities to provide broadband to consumers.

Sincerely,

/s/ Melissa Newman

Copy via email to:
Travis Litman
Rebekah Goodheart