

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**REPLY TO OPPOSITION**

Co-Mo Comm, Inc. (“Co-Mo”) and United Services, Inc. (“United”) pursuant to Section 1.115 of the Commission’s Rules hereby reply to the Opposition of CenturyLink filed in the above referenced proceeding.<sup>1</sup> CenturyLink’s Opposition utterly fails to address the central question posed in the Application for Review by Co-Mo and United, namely whether the Bureau erred as a matter of fact and policy in denying their challenges and allowing CenturyLink access to CAF funding to provide broadband and voice in areas that are already served by Co-Mo and United. Instead, CenturyLink attempts to further obfuscate the facts and raises procedural defenses, which are meritless and a ploy to prevent the Bureau from addressing the substantive issues that are raised in the Application for Review. The central issue remains that Co-Mo and United sufficiently demonstrated in their challenges that they meet the Commission’s service criteria to sustain their challenges, and that the Bureau should have found that their census blocks were ineligible for funding under the Connect America Fund (“CAF”), thereby promoting the Commission’s underlying policy goals of preserving available funding for areas that are truly unserved. Therefore, Co-Mo and United reiterate their request in their Application for Review that the Commission should reverse the decision by the Bureau in its *Challenge Order*<sup>2</sup> to deny the challenges by Co-Mo and United, and should issue a finding that the challenged census blocks are served by Co-Mo and United with

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<sup>1</sup> Opposition of CenturyLink to Co-Mo Comm, Inc. and United Services, Inc. Application for Review, WC Docket No 10-90 and WC Docket No. 14-93 (filed May 24, 2015) (hereinafter CenturyLink Opposition).

<sup>2</sup> *Connect America Fund*, Order, WC Docket No. 10-90 and WC Docket No. 14-83, DA 15-383 (Wireline Competition Bureau, Mar. 30, 2015)(hereinafter “*Challenge Order*”).

qualifying voice and broadband services and are thus ineligible for CAF support.

**I. The Challenges Filed by Co-Mo and United Sufficiently Showed They Provide Voice and Broadband to the Challenged Census Blocks.**

Contrary to claims by CenturyLink in its Opposition, the challenges that Co-Mo and United filed provided sufficient information for the Bureau to sustain their challenges.<sup>3</sup> They provided statements that they are providing voice and broadband services in the challenged census blocks that are reasonably comparable to services in urban areas.<sup>4</sup> They provided statements and maps showing that they have voice and broadband-capable physical assets in the challenged census blocks.<sup>5</sup> Finally, they provided statements and a map showing they serve customers and/or were adding subscribers in these challenged census blocks, thus demonstrating that these areas did not lack access to Internet, which is ultimately the *sine qua non* for sustaining a challenge that an area is served and hence ineligible for CAF Phase II funding.<sup>6</sup>

The evidence submitted by Co-Mo and United is sufficient to sustain their challenges. In its *CAF*

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<sup>3</sup> *Id.* at 4 (stating that “the Bureau correctly determined based on the evidence before it that Co-Mo had not provided sufficient evidence to sustain its challenge,” and that “[s]imilarly, the Bureau also correctly determined that United’s challenge was not sufficiently supported based on the evidence presented.”)

<sup>4</sup> *See* Connect America Fund Challenge of Co-Mo Comm, WC Docket No: 14-93 at 1 (filed Aug. 14, 2014) (hereinafter, “Co-Mo Challenge”) (certifying that Co-Mo Comm (DBA Co-Mo Connect) provides broadband and voice service [in the challenged census blocks] ... [and explaining that] 5mbps symmetrical service is available at \$39.95 per month and 35mbps symmetrical service at \$49.95; [as well as stating that] [r]esidential phone service is also offered at \$39.95 per month with unlimited long distance, [and adding that] [b]oth services are offered at prices comparable to urban areas. When bundled, both rates are significantly less.”). *See also* Connect America Fund Challenge of United Services, Inc., WC Docket No. 14-93 at 1 (filed Aug. 14, 2014) (hereinafter “United Challenge”) (stating that “[w]e are currently providing data, voice, and video services in these areas with broadband speeds from 15 Mbs symmetrical to 100 Mbs symmetrical and plan to roll out Gigabit services in the next 60 days,” and adding that “[o]ur latency is significantly less than 100 ms, we have not imposed data caps, and our prices are reasonably comparable to services in urban areas.”)

<sup>5</sup> *See* Co-Mo Challenge at 1 and at attached map (stating “Co-Mo Connect and its parent company Co-Mo Electric are actively building approximately 100 miles of fiber to the home network each month. Co-Mo has active fiber to the home plant and service available in all of the census blocks filed in form 505...” and showing areas on map that are in Co-Mo’s service territory). *See also* United Challenge at 1 and attached map (explaining where the map shows current customers and where there is fiber available to serve customers).

<sup>6</sup> *See* Co-Mo Challenge at 1 (explaining that Co-Mo is “gathering additional subscribers in each of these areas every day,” and that “[b]y the time the challenge process is complete, many additional blocks will have service available as well -- possibly resulting in funding being awarded to price-capped carriers to overbuild our active fiber plant with inferior DSL broadband.”) *See also* United Challenge at 1 (explaining that even in the red census blocks on the map where it did not currently serve customers that “[w]e anticipate serving customers ... soon, as we are adding new customers quickly.”)

*Challenge Guidance Public Notice*, the Bureau stated that “providers are not required to make an independent showing regarding each of the three criteria when making their challenges,” and it reaffirmed its conclusion from the Phase I challenge process that “a statement from a person with knowledge of the facts is sufficient to fulfill the requirement that challenges be supported by evidence.”<sup>7</sup> Therefore, the statements and certifications made by Co-Mo and United in their challenges sufficiently meet the Commission’s CAF service criteria requirements and rebut CenturyLink’s arguments to the contrary, as described more fully below.

As Co-Mo and United explained in the Application for Review, the Bureau has clarified that “a broadband provider that provides voice using a managed voice solution obtained from a third party vendor *would* be considered to be providing voice service, *so long as the broadband provider is the entity responsible for dealing with any customer problems, and it provides quality of service guarantees to end user customers.*”<sup>8</sup> As Co-Mo and United showed in their Application for Review, Co-Mo and United are the customer face for the voice services that they provide through Big River Telephone, and thus they meet the requirement that a provider offers voice services in the challenged census block.<sup>9</sup> Second, they clearly provided evidence in the form of maps and statements to show that they have voice and broadband-capable physical assets in the challenged census blocks, an issue that CenturyLink does not dispute. Finally, they have shown that they have customers in the challenged census blocks or they are capable of providing

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<sup>7</sup>Public Notice, Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process, Connect America Fund, WC Docket No. 10-90, DA 14-864, 29 FCC Rcd 7505 at ¶¶11 and 13 (rel. June 20, 2014)(hereinafter *CAF Challenge Guidance Public Notice*).

<sup>8</sup> *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211 at ¶9, n. 21 (Wireline Comp. Bur. 2013) (*Phase II Challenge Process Order*)(stating that “[a] broadband provider, such as a cable operator, that provides voice through an affiliated competitive local exchange company would be considered to be providing voice service. Likewise, a broadband provider that provides voice using a managed voice solution obtained from a third party vendor would be considered to be providing voice service, so long as the broadband provider is the entity responsible for dealing with any customer problems, and it provides quality of service guarantees to end user customers. In contrast, if a provider simply resells an over-the-top VoIP product without taking steps to establish quality of service for that product or making quality of service guarantees to end user customers, we would have concerns that such a provider is not providing voice service in a fashion contemplated by the Commission when it decided not to provide funding in areas served by unsubsidized competitors.”)

<sup>9</sup> See Application for Review by Co-Mo Comm, Inc. and United Services, Inc. in WC Docket No. 10-90 at 6-9 (filed Apr. 29, 2015).

service to customers in those areas, such that these areas do not lack access to the Internet. As the Bureau has explained, “the Commission did not specifically require ... that a provider actually have customers in a particular census block in order to preclude eligibility for funding. Rather, the Commission spoke in terms of whether an area ‘lacks Internet access’ of a particular speed,” such that “a provider could offer broadband access to consumers in a census block, [and even if] none of those consumers choose to subscribe to the broadband service... such a census block would still qualify as having access to broadband even though the block contains no customers.”<sup>10</sup>

## **II. The Application for Review is Not Procedurally Defective, and Co-Mo and United Have Demonstrated That They Meet the Criteria to Sustain Their Challenges.**

### **A. Procedural Issues**

CenturyLink ignores the evidence submitted by Co-Mo and United as well as Commission policy, and attempts to raise procedural arguments instead to mask the truth that the challenges were sufficiently supported and should have been sustained by the Bureau. CenturyLink argues that the Bureau should ignore the evidence that Co-Mo and United have submitted on the record, and insinuates that Co-Mo and United are attempting to improperly introduce new facts or legal issues in their Application for Review that should have been introduced and considered earlier.<sup>11</sup> In reality, it is CenturyLink that is trying to manipulate the process by attempting to prevent Co-Mo and United from rebutting the mischaracterizations and misleading arguments that CenturyLink made in its Reply.

In its Reply, CenturyLink mischaracterized the relationship Co-Mo and United has with Big River Telephone to argue that Co-Mo and United are not offering voice services in the areas under challenge. In response, Co-Mo and United explained in their Application for Review that they are not simply resellers of

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<sup>10</sup> *Connect America Fund*, WC Docket No. 10-90, Order, 29 FCC Rcd 181, 186-87, ¶17 (Wireline Comp. Bur. 2014)(concluding that “[w]e therefore decline to require evidence that the provider is currently serving customers in a particular census block, so long as there is some indication that it offers service in the area and is able to provide service within a commercially reasonable time frame.”)

<sup>11</sup> *See* CenturyLink Opposition at 6 (arguing that “an Application for Review is not to be used to provide new facts or raise new legal issues before the full Commission that were not presented to the Bureau,” and that “this is especially the case here where the Bureau made it abundantly clear that parties to the challenge process would have one opportunity to present their evidence that census blocks were either served or unserved.”)

Big River Telephone and that they act as the customer face for the voice services that are provided. Thus when they provided this information in the Application for Review, they were merely providing an explanation to correct the mischaracterization by CenturyLink, which speculated about whether Co-Mo and United were truly offering voice services that would qualify under the Commission's rules for CAF Phase II.

Likewise as part of its Reply, CenturyLink questioned United's pricing information in its challenge, and these arguments were easily refuted in the Application for Review by showing that United's pricing information was readily available on United's website. Here again, the point was not to introduce new evidence, but rather to show that CenturyLink could have easily discovered United's pricing information online instead of questioning whether United's services were somehow not reasonably comparable in price to services that are available in urban areas, as required by the Commission's rules.

Finally, in order to rebut the claim in CenturyLink's Reply that Co-Mo and United lacked current and former customers in the challenged census blocks, Co-Mo and United provided exhibits showing the number of customers that they serve in the challenged census blocks and showing that they have deployed fiber in those census blocks. This information was provided in direct response to CenturyLink's attempt to question the certifications and statements made in the challenges by Co-Mo and United that they are providing service and deploying fiber in the challenged census blocks. Moreover, the information that was provided in the Application for Review irrefutably shows what CenturyLink continues to try to ignore -- that Co-Mo and United are providing broadband and voice services in these areas.<sup>12</sup>

For all of these reasons, procedurally Co-Mo and United should be given the opportunity to explain the sufficiency of the information that they provided in their challenges. It is no answer for CenturyLink to argue that the challenge process prevents Co-Mo and United from providing information in response to the erroneous issues raised in CenturyLink's Reply, which may have improperly influenced the

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<sup>12</sup>*But see* CenturyLink Opposition at 9 (obtusely arguing that the lists provided by Co-Mo and United failed to specify what services they provided in a given census block or failed to explain how they are serving areas where they currently don't have customers – which is made clear by the fact that the lists show that they have fiber deployed in those census blocks).

Bureau to deny the challenges by Co-Mo and United. Moreover, the explanations that Co-Mo and United have provided in their Application for Review simply provide the Commission with information to support the basis for the certifications and statements that Co-Mo and United made in their challenges. Stated another way, all that Co-Mo and United did was provide the information that the Bureau reserved the right to request from them to justify the statements and certifications that they made in their challenges.<sup>13</sup>

## **B. Substantive Issues**

On the substantive issue here, Co-Mo and United have clearly shown that they meet the requisite service criteria to sustain their challenges that they serve the challenged census blocks in Missouri, contrary to CenturyLink's claims.<sup>14</sup> First, they have answered the questions raised by CenturyLink about the voice services that they provide by explaining that they are not simply reselling voice services from Big River Telephone and that they are responsible for dealing with any customer problems, and provide quality of service guarantees to end user customers, consistent with the Bureau's clarification in the *Phase II Challenge Process Order*.<sup>15</sup> Second, they have provided a list of the census blocks where they have deployed and have shown where they have customers and where they have fiber, contrary to CenturyLink's continued refusal to recognize the substance of the evidence that they have submitted. Finally, they have demonstrated both in their challenges and in the Application for Review that the services that they are offering are reasonably comparable to the services that are offered in urban areas, in response to questions raised by CenturyLink in its Reply.

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<sup>13</sup> See *CAF Challenge Guidance Public Notice*, at ¶10 (stating that “[i]n order to certify that a block is served, the party making the certification must have a factual basis to conclude each of these criteria is satisfied and be prepared to produce additional evidence to substantiate its claim to Commission staff upon request. If these criteria are not met, it cannot make the requisite certification. To certify falsely in this context would subject the party to potential enforcement action.”).

<sup>14</sup> CenturyLink Opposition at 8 (underscoring that “the applicants have still failed to sufficiently demonstrate that they meet the requisite service criteria for the challenged service blocks.”)

<sup>15</sup> See *Phase II Challenge Process Order*, ¶9, n. 21.

## CONCLUSION

Co-Mo and United have sufficiently demonstrated that they meet the service criteria to sustain their challenges that they serve these census blocks with voice and broadband. They have refuted CenturyLink's erroneous mischaracterizations of their voice services. They have proven that they provide broadband services that are reasonably comparable to services in urban areas. Finally, they have sufficiently shown that they currently serve customers in these census blocks and that they are easily capable of adding subscribers in areas where they have deployed fiber but don't currently have any customers. The procedural arguments raised by CenturyLink in its Opposition are meritless and are pure ploys to avoid the substantive issue that Co-Mo and United have clearly supported their challenge and that the Bureau should determine that the census blocks are ineligible for CAF funding.

As Co-Mo and United pointed out in their Application for Review, there are larger policy reasons for the Commission to reject CenturyLink's arguments, because the Bureau's decision is contrary to the Commission's fundamental rule that CAF funding should not be provided in areas that are already served. Therefore, the Commission should grant the Application for Review by Co-Mo and United in order to prevent CenturyLink from using CAF funds to overbuild in Co-Mo and United's service territories – which will also ensure that available funds are allocated wisely and efficiently to areas that are truly unserved.

Respectfully,



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May 26, 2015

## CERTIFICATE OF SERVICE

I, Eric Wagner, hereby certify that on this 26th day of May, 2015, I have served a copy of the foregoing Reply to Opposition via first class U.S. Postal Service mail, postage prepaid, or via electronic mail on the following parties:

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