

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

To: Chief, Wireline Competition Bureau

**OPPOSITION OF WESTERN WIMAX, LLC
TO PETITION FOR WAIVER**

Western WiMax, LLC (“Western”), by counsel and pursuant to Sections 1.409 and 1.415 of the Commission’s Rules, hereby strongly opposes the Petition for Waiver (“Petition”) filed on June 26, 2012 by CenturyLink.¹ CenturyLink’s claims rely on unproven assumptions and are patently false. The Petition should be dismissed or denied.

¹ See *Public Notice*, “Wireline Competition Bureau Seeks Comment on CenturyLink Petition for Waiver of Certain High-Cost Universal Service Rules,” DA 12-1007, rel. June 27, 2012 (“*Public Notice*”). The *Public Notice* established a July 12, 2012 deadline for the filing of responsive pleadings. Accordingly, this Opposition is timely filed.

Introduction²

Western is a fixed wireless broadband provider based in the Greater Phoenix, Arizona area. Western uses the “lightly licensed” in the 3650-3700 MHz band exclusively for *unsubsidized* commercial services and the unlicensed 5 GHz band to provide high-quality residential broadband service. Western utilizes its own extensive FCC-licensed backhaul system to build redundancy in the downtown Phoenix area. Western’s backhaul system is one of the largest wireless metro backbone systems in the nation and allows Western to carry 100 percent of its own traffic sourced from its clients.

Discussion

CenturyLink claims that there are 875 living units within Western’s coverage area that should be designated as “unserved.”³ To support this allegation, CenturyLink relies on two assumptions. First, it asserts that the National Broadband Map shows that Western “provide[s] uninterrupted coverage within perfect circles that extend for many miles from a cell site,” and that “*no* WISP service, operating on high frequencies and amid geographic and other obstructions, could possibly serve all customers within such large and neatly defined radii.”⁴ Second, CenturyLink argues that, because the State of Arizona “did not have the evaluation tools needed for an independent assessment” of information submitted by the State mapping contractor, the National Broadband Map is not only inaccurate, but overstates Western’s coverage.⁵ CenturyLink then makes certain assumptions to re-calculate coverage and, based on this analysis, concludes that there are

² The Declaration of Timothy Shea, Western’s Managing Member, attached hereto as Exhibit 1 (“Shea Declaration”), certifies to the truthfulness and accuracy of the facts stated herein.

³ See Petition at 6, Exhibit C and Exhibit D.

⁴ *Id.* at 5-6 (emphasis in original).

⁵ *Id.* at 6.

precisely 875 living units in CenturyLink's wire centers that are actually "unserved" and thus available for Connect America Fund ("CAF") Phase I subsidies.

Under long-standing precedent, a party seeking waiver of Commission rules faces a "high hurdle" to prove that it should obtain the requested relief.⁶ CenturyLink totally fails to meet its burden.

CenturyLink's first claim is unproven. Its Director of Regulatory Operations – not an engineer experienced in fixed wireless propagation – submits a declaration (Exhibit A to the Petition) that unilaterally and arbitrarily assumes that Western's coverage cannot extend more than 10 miles. By contrast, Mr. Shea states that:

CenturyLink ignores the flat terrain, the strategic location of Western's tower sites, dry air and lack of large vegetation that typically enables Western to cover distances of 10 miles or more in the Greater Phoenix area while meeting National Broadband speed standards. *Our most dense coverage happens to be in the two areas indicated by the red arrows.* Both of those areas are particularly devoid of obstructions and are served by as many as 14 different cell/repeater sites located within the subject areas alone. It is apparent that CenturyLink conducted no on-site spectrum testing – if it had, it would not have named Western in its Petition and it would not have concluded that diameters of 10 miles is inaccurate.⁷

In short, CenturyLink's assumptions about Western's architecture are plainly wrong.

Even assuming CenturyLink's claims can somehow withstand these fatal defects, its next assumption is likewise untenable. CenturyLink asserts, without any support, that the State of Arizona did not verify the mapping information its contractor provided. CenturyLink provides no declaration to confirm that the State did not analyze the data. It also would have the Commission conclude that, not only is the information unverified, but that it is also inaccurate, that it overstates western's coverage, and that there are

⁶ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (1972), *cert. denied*, 93 S.Ct. 461 (1972).

⁷ Shea Declaration at 2 (emphasis added).

precisely 875 living units that are actually “unserved” and eligible for subsidies. As Mr. Shea states, the National Broadband Map likely *understates* Western’s coverage.⁸ In this sense, CenturyLink offers unverified information in a series of dubious and unproven assumptions to show that unverified mapping information should be discredited. The hypocrisy in this approach is obvious. The Commission cannot simply take CenturyLink at its word and give it more than \$670,000 for CAF Phase I funding in Western’s unsubsidized coverage area.

Conclusion

CenturyLink’s Petition is built on a series of flawed assumptions and conjecture, and falls woefully short of meeting the “high hurdle” it faces. The Commission should dismiss or deny CenturyLink’s Petition with respect to Western.

Respectfully submitted,

WESTERN WIRELESS, INC.

Date: July 12, 2012

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⁸ See Shea Declaration at 2-3.

Exhibit 1

Declaration of Timothy Shea

My name is Timothy Shea, and I am the Managing Member of Western WiMAX, LLC ("Western"), a wireless Internet service provider based in Phoenix, Arizona. I am making this Declaration in support of Western's Opposition to a Petition for Waiver filed on June 26, 2012 by CenturyLink. I hereby certify under penalty of perjury that the statements of fact contained in this Declaration are true and correct to the best of my knowledge, information and belief.

1. Western provides fixed wireless broadband service in the Greater Phoenix area. Western uses lightly licensed spectrum in the 3650-3700 MHz band exclusively for commercial services and the 5.2-5.7 GHz unlicensed bands to provide high-quality residential broadband service. Western utilizes its own extensive FCC-licensed backhaul system to aggregate both residential and commercial access subscribers to as many as three Internet POPs (point of presence) in the downtown Phoenix area. Western's backhaul system is one of the largest wireless metro backbone systems in the nation and allows Western to carry 100 percent of its own traffic sourced from its clients. As result, Western is capable of being as competitive as market forces require.

2. CenturyLink's Petition suggests that Western cannot provide uninterrupted coverage as depicted on the National Broadband Map. On pages 5-6 of its Petition, CenturyLink states that "no WISP service, operating on high frequencies and amid geographic other obstructions, could possibly serve all customers within such a large and neatly defined radii." It also claims that the state of Arizona did not independently evaluate the information upon which its mapping contractor relied. According to

CenturyLink, there are a total of 875 living units that should be in “unserved” areas but are shown as “served” on the National Broadband Map.

3. Western has NOT provided the Arizona state mapping contractor detailed coverage modeling, but has given the contractor appropriate information to ascertain Western’s coverage through the use of public information from the FCC and other publicly available resources. The information Western makes available is based on its own proprietary propagation analyses and accounts for the particular circumstances of the area, including terrain, the 5.2-5.7 GHz and 3650-3700 MHz spectrum characteristics that Western utilizes and the architecture of our network.

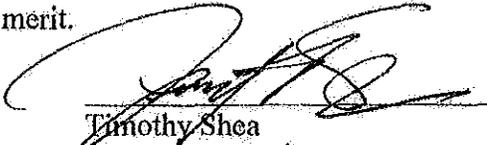
4. The Petition makes a number of erroneous statements and false assumptions. First, CenturyLink ignores the flat terrain, the strategic location of Western’s tower sites, dry air and lack of large vegetation that typically enables Western to cover distances of 10 miles or more in the Greater Phoenix area while meeting National Broadband speed standards. Our most dense coverage happens to be in the two areas indicated by the red arrows. Both of those areas are particularly devoid of obstructions and are served by as many as 14 different cell/repeater sites located within the subject areas alone. It is apparent that CenturyLink conducted no on-site spectrum testing -- if it had, it would not have named Western in its Petition and it would not have concluded that diameters of 10 miles is inaccurate.

5. Second, CenturyLink assumes -- and would have the FCC believe -- that the failure of the state to verify coverage data somehow renders Western’s information categorically inaccurate, and inaccurate in the sense that it overstates Western’s coverage. Quite to the contrary, I believe that the National Broadband Map is likely conservative in

its projection of Western's coverage. CenturyLink would also have the Commission believe that only mapping data submitted by fixed wireless broadband providers overstates coverage, but copper and fiber based providers suffer from many of the same technical shortcomings as wireless providers. They are also limited in their ability to deliver service in areas they have stated coverage by many similar environmental and technical issues as Western. One could easily assume that the state did not verify the information that CenturyLink submitted, either.

6. Third, CenturyLink also does not disclose where the claimed "unserved" living units are located. Though dubious, its claim to an additional 875 living units cannot be challenged by Western because CenturyLink fails to provide sufficient information.

8. In sum, CenturyLink has not proved that the map overstates Western's coverage. To the contrary, there are so many generalities, errors and faulty assumptions that the Petition is essentially without merit.



Timothy Shea

Date 7/11/2012