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 JAB WIRELESS, INC. TO PETITION FOR WAIVER

JAB Wireless, Inc. dba Skybeam ("JAB"), 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.

[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.

Introduction

JAB is a fixed wireless broadband provider that provides service to approximately 140,000 residential and business customers, making it one of the largest wireless Internet service providers in the country.[2] JAB uses unlicensed spectrum in the 900 MHz, 2.4 GHz and 5 GHz bands and "lightly licensed" spectrum in the 3650-3700 MHz band. In many areas where JAB operates, it is the only provider of terrestrial fixed broadband service. In other areas, JAB competes directly with CenturyLink and other broadband providers. Some of the areas JAB serves are within CenturyLink's telephone service areas, but CenturyLink has chosen to not deploy broadband service in many of these areas. JAB does not receive federal universal service support to subsidize broadband in high-cost areas.

JAB has complied with all mapping requests from Critigen, the mapping contractor for the state of Colorado. As stated in the attached Declaration, as requested, JAB provides specific information to Critigen to enable Critigen to perform propagation analyses that account for the particular circumstances of our coverage areas.

Discussion

CenturyLink claims that there are 6,947 living units within Skybeam's southwestern Colorado coverage area (*i.e.*, the area south of Grand Junction on the Colorado map included in Exhibit D of the Petition) 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 Skybeam ubiquitously covers a mountainous area, which it says is unlikely. Second, CenturyLink argues that, because

[2] The Declaration of Jeff Kohler, JAB's Chief Development Officer, attached hereto as Exhibit 1, certifies to the truthfulness and accuracy of the facts stated herein.
[3] *See* Petition at 6, Exhibit C and Exhibit D.

the State of Colorado may not have independently verified the mapping information provided to it, the National Broadband Map is not only inaccurate, but overstates Skybeam's coverage. CenturyLink then makes certain assumptions to re-calculate coverage and, based on this analysis, concludes that there are precisely 6,947 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.[4] CenturyLink totally fails to meet its burden.

CenturyLink's first claim is unproven. Though it argues that the map shows ubiquitous coverage in the subject area, this does not appear to be the case. The Colorado map CenturyLink includes in Exhibit D lacks sufficient detail for anyone to determine where Skybeam's coverage is shown and where CenturyLink says such coverage is overstated. In fact, it appears that the map shows areas where Skybeam's coverage is not ubiquitous, meaning that the map accounts for variables such as terrain, the spectrum Skybeam uses and other obstructions. In short, the "evidence" that CenturyLink proffers is, at best, inconclusive and, more likely, contravenes CenturyLink's claims.

From there, CenturyLink's claims actually get worse. 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 Skybeam's coverage cannot extend more than 10 miles. CenturyLink makes no mention of the spectrum Skybeam uses or what substitute range it believes is more accurate than

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[4] *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).

10 miles. CenturyLink does not identify the locations of Skybeam's towers or its access points, which are used to define Skybeam's coverage areas. CenturyLink demonstrates no knowledge of Skybeam's system design and no data to show how it determined the number of living units in Skybeam's coverage area that should be treated as "unserved." In short, CenturyLink provides no "evidence" that JAB can reasonably address. When it trips on the starting blocks, CenturyLink can't even reach the "high hurdle" it must overcome.

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 Colorado did not "vet the data underlying the current version" of the National Broadband Map and that its Office of Information Technology ("OIT") "agrees that many of the areas shown as covered on that version appear overstated."[5] CenturyLink provides no declaration to confirm that the OIT did not analyze the data or any evidence of OIT's "agreement" that the map overstates fixed wireless coverage. It also would have the Commission take the giant leap and conclude that, not only is the information unverified, but that it is also inaccurate, that it overstates coverage, and that there are precisely 6,947 living units that are actually "unserved" and eligible for subsidies. 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 $5.3 million for CAF Phase I funding in Skybeam's unsubsidized coverage area.

[5] Petition at 6.

And even if Skybeam's data was not vetted by the State, can CenturyLink reasonably argue that the data it submitted to Critigen is accurate and does not overstate its coverage? A more likely conclusion is that Critigen probably accepted CenturyLink's coverage data at face value and the OIT vetted it in a similar fashion. But CenturyLink wants only JAB (and the other targets of its Petition) to suffer from alleged inaccuracies in the National Broadband Map. It would be unreasonable for the Commission to view the circumstances from such a one-sided perspective, especially where CenturyLink bears the burden of proof.

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 CenturyLink's Petition with respect to JAB.

Respectfully submitted,

JAB WIRELESS, INC.

Date: July 12, 2012

By: *<u>/s/ Stephen E. Coran</u>*

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Exhibit 1

Declaration of Jeff Kohler

My name is Jeff Kohler, and I am Chief Development Officer of JAB Wireless, Inc. ("JAB"), which operates under the name "Skybeam" in Colorado. I am making this Declaration in support of JAB'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. JAB is a wireless Internet service provider ("WISP") that provides fixed wireless broadband service to residential, educational, public safety and business customers in Utah, Idaho, Colorado, Wyoming, Texas, Oklahoma, Illinois, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, South Dakota and Nevada. JAB has approximately 140,000 customers and to our knowledge is the largest fixed wireless broadband provider in the country. JAB uses unlicensed spectrum in the 900 MHz, 2.4 GHz and 5 GHz bands and "lightly licensed" spectrum in the 3650-3700 MHz band. In some of our service areas, JAB is the only terrestrial broadband provider because neither DSL nor cable service extend their lines to these areas. In other areas, we compete head-to-head with CenturyLink and other companies. JAB does not receive federal universal service subsidies to serve high-cost areas.

2. CenturyLink's Petition argues that JAB's Skybeam network south of Grand Junction, Colorado shows areas of unbroken coverage for more than 10 miles, and suggests that it is unlikely that service is ubiquitous in light of the mountainous geography. Although the resolution of the map image is unclear, it appears that this area does *not* show ubiquitous coverage, but instead shows the impact of terrain. This is

shown by the presence of green and brown alongside the red areas that designate JAB's coverage area.

3. JAB has complied with all mapping requests from Critigen, the Colorado state mapping contractor. As requested, JAB provides Critigen with tower location and radio capability information to enable Critigen to develop its propagation analyses. I believe that this information is used to generate the National Broadband Map for our Colorado operations.

4. The Petition states that the Colorado Office of Information Technology is "currently analyzing the data submitted by WISPs." Assuming that is true, it is reckless or, at best, premature for CenturyLink to conclude that the National Broadband Map understates the number of "unserved" living units in the state. Moreover, CenturyLink does not identify where these locations are, and no one can reasonably tell based on the map, which lacks sufficient detail to support CenturyLink's proposition.

5. I have read CenturyLink's Petition and I believe that its assumptions about coverage are false and misleading. CenturyLink does not prove that the National Broadband Map is either unverified or, more importantly, inaccurate. CenturyLink also does not disclose where the claimed "unserved" homes are. In sum, CenturyLink has not proved that the map overstates JAB's coverage.

Jeff Kohler

7-11-12
Date