

**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 INVISIMAX, INC.
TO PETITION FOR WAIVER**

InvisiMax, Inc. (“InvisiMax”), 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.

Introduction

InvisiMax is a fixed wireless broadband provider that provides service to approximately 2,000 residential and business customers in North Dakota and Minnesota.² InvisiMax 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 InvisiMax operates, it is the only provider of terrestrial fixed broadband service. In other areas, InvisiMax competes directly with CenturyLink and other broadband providers. Some of the areas InvisiMax serves are within CenturyLink’s telephone service areas, but CenturyLink has chosen to not deploy broadband service in many of these areas. InvisiMax does not receive any federal universal service support.

InvisiMax has complied with all mapping requests from Tetra Tech, Inc. (“Tetra Tech”), the mapping contractor for the State of North Dakota. As requested, InvisiMax provides specific information to Tetra Tech so that Tetra Tech can, in turn, provide the mapping data to the State.

Discussion

CenturyLink claims that there are 308 living units within InvisiMax’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 InvisiMax ubiquitously covers an unbroken area of more than 10 miles, which it claims is unlikely. Second, CenturyLink argues that, because the State of North Dakota may not have independently verified the mapping information provided to it, the National Broadband Map is not only inaccurate, but overstates InvisiMax’s coverage.

² The Declaration of Dave Giles, InvisiMax’s President, 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.

CenturyLink then makes certain assumptions to re-calculate coverage and, based on this analysis, concludes that there are precisely 308 living units in CenturyLink's wire centers that are actually "unserved" by InvisiMax 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. 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 InvisiMax's coverage cannot extend more than 10 miles. CenturyLink makes no mention of the spectrum InvisiMax uses and does not identify the locations of InvisiMax's towers or its access points, which are used to define InvisiMax's coverage areas. CenturyLink demonstrates no knowledge of InvisiMax's system design and no data to show how it determined the number of living units in InvisiMax's coverage area that should be treated as "unserved." In short, CenturyLink provides no "evidence" that InvisiMax 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 North Dakota "took WISP-submitted data completely at face value when

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).

putting together its broadband service map.”⁵ CenturyLink provides no declaration from a State official to confirm this allegation. 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 308 living units that are actually “unserved” by InvisiMax and eligible for subsidies. In this sense, CenturyLink would have the Commission accept its own unverified 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 almost \$240,000 for CAF Phase I funding in InvisiMax’s unsubsidized coverage area.

And even if the State took InvisiMax’s data at face value, can CenturyLink reasonably argue that the data it submitted to Tetra Tech is accurate and does not overstate its coverage? A more likely conclusion is that Tetra Tech probably accepted CenturyLink’s coverage data at face value as well. But CenturyLink wants only InvisiMax (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.

⁵ Petition at 6.

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 InvisiMax.

Respectfully submitted,

INVISIMAX, INC.

Date: July 12, 2012

By: /s/ Stephen E. Coran
Rini Coran, PC
1140 19th Street, NW, Suite 600
Washington, DC 20036
(202) 463-4310
scoran@rinicoran.com

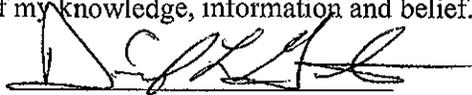
Its Attorneys

Exhibit 1

Declaration of Dave Giles

My name is Dave Giles, and I am the President of InvisiMax, Inc. ("InvisiMax").

I am making this Declaration in support of InvisiMax's Opposition to a Petition for Waiver filed on June 26, 2012 by CenturyLink. I have read InvisiMax's Opposition. I hereby certify under penalty of perjury that the statements of fact contained in the Opposition are true and correct to the best of my knowledge, information and belief.



Dave Giles

7-10-2012
Date