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 CELLTEX NETWORKS, LLC TO PETITION FOR WAIVER

CellTex Networks, LLC ("CellTex"), by counsel and pursuant to Sections 1.409 and 1.415 of the Commission's Rules, hereby opposes the Petition for Waiver ("Petition") filed on June 26, 2012 by CenturyLink.[1] CenturyLink claims that because CellTex charges more than $720 annually for broadband service, certain undefined areas it covers should be re-designated as "unserved" so CenturyLink can obtain more than $230,000 in Connect America Fund ("CAF") Phase I funding. Because CenturyLink's

[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.

argument rests on an arbitrary standard it devised to suit its needs, there is no legal basis for it. The Petition thus should be dismissed or denied.

Introduction

CellTex is a fixed wireless broadband provider that provides service to approximately 600 customers near San Antonio, Texas.[2] CellTex uses unlicensed spectrum in the 900 MHz, 2.4 GHz and 5 GHz bands. In many areas where CellTex operates, it is the only provider of terrestrial fixed broadband service. In other areas, CellTex competes directly with CenturyLink and other broadband providers. Some of the areas CellTex serves are within CenturyLink's telephone service areas, but CenturyLink has chosen to not deploy broadband service in many of these areas. As a standalone broadband provider, CellTex receives no federal support to help subsidize its construction or operations.

Discussion

CenturyLink claims that there are a total of 305 living units within CellTex's coverage that should be re-designated as "unserved."[3] As the sole basis for this allegation, CenturyLink asserts that CellTex charges more than $720 in non-recurring (*e.g.*, installation) and recurring (*e.g.*, monthly service) fees for a customer's first year of broadband service, and that this is not a "reasonable price."[4] According to CenturyLink, CellTex's service "exhibits the characteristics that led the Commission to disregard

[2] The Declaration of Greg Huber, CellTex's Managing Member, attached hereto as Exhibit 1, certifies to the truthfulness and accuracy of the facts stated herein.
[3] *See* Petition at Exhibit B.
[4] *See* Petition at Exhibit A, p.4.

satellite broadband service for purposes of deciding which areas are 'unserved' under CAF Phase I."[5]

CenturyLink's Petition is legally defective and should be dismissed or denied. For purposes of determining areas where Phase I support may be provided, the Commission relies on its definition of "broadband" adopted in the *USF/ICC Transformation Order* – speed of at least 4 Mbps/1 Mbps to "provide subscribers in rural and high cost areas with the ability to use critical broadband applications in a manner reasonably comparable to broadband subscribers in urban areas."[6] The Commission expressly declined to adopt performance metrics, even for CAF Phase I recipients,[7] and adopted a one-time fixed payment of $775 per location rather than adopting a detailed economic cost model.

In the *Second Order on Reconsideration*, the Commission flatly rejected CenturyLink's efforts to impose additional service quality standards on WISPs "for several reasons."[8]

> We acknowledge that some consumers may live in areas ineligible for CAF Phase I support even though the broadband available to them does not currently meet our goals. The Commission chose in CAF Phase I, however, to focus limited resources on deployments to extend broadband

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[5] Petition at 7.

[6] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; and Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*USF/ICC Transformation Order*"), at ¶ 94.

[7] *See id.* at ¶ 98.

[8] *In the Matter of the Connect America Fund, A National Broadband Plan for Our future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Second Order on Reconsideration, FCC 12-47, rel. Apr. 25 ("*Second Order on Reconsideration*"), at ¶ 15. This argument was presented in ITTA Petition and in CenturyLink's ex parte presentation. *See* letter from Melissa E. Newman to Marlene H. Dortch, FCC Secretary, WC Docket No. 10-90, *et al.*, dated Apr. 23, 2012.

> to some of the millions of unserved Americans who lack access to broadband entirely, rather than to drive faster speeds to those who already have service. We are not persuaded that the decision about the more pressing need was unreasonable. Moreover, we are not persuaded that permitting CAF Phase I recipients to overbuild other broadband providers represents the most efficient use of limited CAF Phase I support. *In addition, we conclude that we do not have an adequate record at this time to make a determination about how high a competitor's price must be—either alone or in combination with usage limits—before we would support overbuilding that competitor, a critical component of petitioners' request.*[9]

Clearly, for purposes of CAF Phase I, the Commission has no interest in upsetting the simple standards it adopted to expedite support to CenturyLink and other price cap carriers.

Nevertheless, CenturyLink picks a single element of CellTex's service – the cost of broadband service – to suggest that areas CellTex serves should be "unserved" for CAF Phase I purposes. In undertaking this analysis, CenturyLink arbitrarily contrives the $720 figure based on its own pricing for broadband service. CenturyLink's use and proposed justification of this number does not constitute an adequate record, and the Commission has not requested this information for CAF Phase I. Instead, and in contrast to procedures it is adopting for CAF Phase II, the Commission made the wise and considered decision to keep the CAF Phase I process simple and uncomplicated so that price cap carriers like CenturyLink could access funding with a minimum of administrative burdens.

Assuming *arguendo* the Commission were to reverse course and entertain CenturyLink's argument, it does not convey the truth. Included in CellTex's annual fee is a $595 installation fee, which would consume a majority of the $720 threshold unilaterally proposed by CenturyLink. As the attached Declaration of Greg Huber attests,

[9] *Second Order on Reconsideration* at ¶ 15 (footnote omitted) (emphasis added).

the $595 is the maximum cost for broadband installation and includes mounting and purchase of a rooftop mast, internal wiring and other costs, in addition to establishing the wireless connection. CellTex estimates that about 80 percent of its installations are less than this amount and many installations cost the consumer only $50. CellTex estimates that the average installation cost is between $285-$385, which would make the annual cost near $720 or lower.

Even assuming the Commission is willing to entertain CenturyLink's argument, its proposed criterion ignores a host of other performance qualities and service packages associated with CellTex's broadband service. It would be irresponsible for the Commission to look at a single performance metric and determine that CenturyLink should be entitled to more than $230,000 in CAF Phase I subsidies.

The Commission wisely decided in the *Second Order on Reconsideration* to avoid imposing pricing minimums on incumbent fixed broadband providers. That decision no doubt anticipated the arbitrariness of selecting performance metrics and the line-drawing in which the Commission would be required to engage in order to make qualitative judgments about a particular broadband provider's service. That CellTex provides broadband service to approximately 600 customers, many of whom apparently can get service from CenturyLink, attests to the real motive behind its claim – to get federal subsidies so it can better compete with unsubsidized broadband providers like CellTex. Such a result would be contrary to the simple rules and considered policies applicable to the CAF Phase I process.

Conclusion

CenturyLink's Petition is predicated on the imposition of a single performance metric that the Commission has concluded is totally irrelevant to whether an area is "unserved." The Commission should dismiss CenturyLink's Petition with respect to CellTex.

Respectfully submitted,

CELLTEX NETWORKS, LLC

Date: July 12, 2012

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

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Exhibit 1

Declaration of Greg Huber

My name is Greg Huber, and I am the Managing Member of CellTex Networks, LLC ("CellTex"). I am making this Declaration in support of CellTex's Opposition to a Petition for Waiver filed on June 26, 2012 by CenturyLink. I have read CellTex'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.

Greg Huber

7-10-2012

Date