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 RANCH WIRELESS, INC. TO PETITION FOR WAIVER

Ranch Wireless, Inc. ("Ranch"), 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 Ranch imposes a 20 GB data cap for its least expensive tier of service, certain undefined areas it covers should be re-designated as "unserved" so CenturyLink can obtain more than $400,000 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

Ranch is a fixed wireless broadband provider that provides service to approximately 2,000 customers in South Central Texas.[2] Ranch 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 Ranch operates, it is the only provider of terrestrial fixed broadband service. In other areas, Ranch competes directly with CenturyLink and other broadband providers. Some of the areas Ranch serves are within CenturyLink's telephone service areas, but CenturyLink has chosen to not deploy broadband service there. As a standalone broadband provider, Ranch receives no federal support to help subsidize its construction or operations.

Discussion

CenturyLink claims that there are 528 living units within Ranch's coverage that should be re-designated as "unserved."[3] As the sole basis for this allegation, CenturyLink asserts that Ranch has established a data cap of 20 GB per month, which is less than the 25 GB monthly cap that satellite provider WildBlue uses.[4] According to CenturyLink, Ranch's service "exhibits the characteristics that led the Commission to disregard satellite broadband service for purposes of deciding which areas are 'unserved' under CAF Phase I."[5]

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[2] The Declaration of Allen Pooley, Ranch's President, 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.5.
[5] Petition at 7.

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 specific capacity or other 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.[8]

In the *Second Order on Reconsideration*, the Commission flatly rejected CenturyLink's efforts to impose additional service quality standards on WISPs "for several reasons."[9]

> 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 to some of the millions of unserved Americans who lack access to broadband entirely, rather than to drive faster speeds to those who already

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[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] This is the subject of a separate Commission proceeding for CAF Phase II. *See Public Notice*, "Wireline Competition Bureau Seeks Comment on Modeling Design and Data Inputs for Phase II of the Connect America Fund," WC Docket Nos. 10-90, 05-337, Report No. DA 12-911, rel. June 8, 2012.

[9] *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.

> 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.*[10]

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 Ranch's service – a data cap of 20 GB per month – to suggest that areas Ranch serves should be "unserved" for CAF Phase I purposes. Even assuming the Commission is willing to entertain CenturyLink's argument, this is entirely unreasonable, and ignores a host of other performance qualities and service packages associated with Ranch's broadband service. As stated in the attached Declaration of Allen Pooley, Ranch imposes a 20 GB monthly data cap only on its least expensive service tier.[11] The data cap is not even a limit – customers can purchase additional bandwidth or upgrade to a service tier that offers higher data caps. Ranch's most popular tier is a $49.95 package that offers higher speeds and a monthly data cap of 60 GB. Ranch's highest tier has a data cap of 300 GB per month. Across its network, fewer than two percent of Ranch's customers exceed the monthly data cap and pay for extra bandwidth.

The Commission wisely decided in the *Second Order on Reconsideration* to avoid imposing service performance requirements on incumbent fixed broadband providers.

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[10] *Second Order on Reconsideration* at ¶ 15 (footnote omitted) (emphasis added).
[11] As stated in Mr. Pooley's Declaration, Ranch increased its 20 GB monthly cap to 30 GB on June 30.

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 Ranch provides broadband service to approximately 2,000 customers, many of whom apparently can get service from CenturyLink as well, attests to the real motive behind its claim – to get more than $400,000 in federal subsidies so it can better compete with unsubsidized broadband providers like Ranch. 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 Ranch.

Respectfully submitted,

RANCH WIRELESS, INC.

Date: July 12, 2012

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

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Exhibit 1

Declaration of Allen Pooley

My name is Allen Pooley, and I am President of Ranch Wireless, Inc. ("Ranch"). I am making this Declaration in support of Ranch'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. Ranch is a wireless Internet service provider ("WISP") based in Seguin, Texas that provides fixed wireless broadband service to approximately 2,000 customers in South Central Texas. Ranch uses unlicensed spectrum in the 900 MHz, 2.4 GHz and 5 GHz bands and the "lightly licensed" 3650-3700 MHz. In some of our service areas, Ranch 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.

2. CenturyLink's Petition argues that Ranch's service to 528 CenturyLink living units should be re-designated as "unserved" because Ranch imposes a 20 GB data cap on one of its service plans. It is important to understand that this cap applies only to Ranch's least expensive tier of service, which is $29.95 per month. Of our 2,000 customers, only about 280 of them subscribe to this plan. On June 30, we raised the data cap for our lowest service tier to 30 GB per month. Ranch's most popular plan is the $49.95 monthly plan, which has a 60 GB data cap and allows customers to purchase additional bandwidth. Over time, many of our customers upgrade from the least expensive plan to other plans in order to enjoy faster speeds and higher data caps. Our highest level of service has a data cap of 300 GB per month.

3. Only about two percent of our customers exceed the data cap for the particular plan they are on. Further, once a customer reaches the 20 GB limit, it is not forbidden to use Ranch's service. Rather, the customer can purchase additional bandwidth or upgrade to another plan.

4. Data caps are only one measure of service. Another is reliability, and I believe that Ranch provides superior reliability in areas where it competes with CenturyLink. Some of our customers sign up for Ranch's service after terminating service from CenturyLink because they believe our service is more reliable or cost effective.

Allen Pooley

Allen Pooley

7/10/12

Date