

**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 WASHINGTON BROADBAND, INC.  
TO PETITION FOR WAIVER**

Washington Broadband, Inc. (“WBI”), 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.<sup>1</sup> As described below, CenturyLink’s claim that the National Broadband Map overstates WBI’s coverage is incorrect – in fact, the map understates the areas that WBI covers. This fact renders useless CenturyLink’s factual assumptions and methodology. CenturyLink does not meet its burden as a waiver

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<sup>1</sup> 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.

proponent to show that it is entitled to the relief it requests. Accordingly, the Commission should promptly dismiss or deny the Petition.

### **Introduction**

WBI is a fixed wireless broadband provider in Yakima, Washington and the surrounding suburban and rural areas.<sup>2</sup> In addition to residential customers, WBI provides service to educational, public safety and business customers that, in some cases, do not have access to DSL or cable technology platforms for broadband service. In other areas, WBI competes directly with CenturyLink and other broadband providers. Some of the areas WBI serves are within CenturyLink's telephone service areas, but CenturyLink has chosen to not deploy broadband service in many of these areas. WBI's construction and operating costs are self-financed and WBI has never received any federal subsidies to help fund its network.

WBI uses unlicensed spectrum in the 900 MHz, 2.4 GHz and 5 GHz bands and "lightly licensed" spectrum in the 3650-3700 MHz band. To deliver point-to-multipoint service, WBI relies on a network of 17 primary towers located about 10 miles apart, with other access points to fill in areas that may be obstructed. To provide backhaul and connectivity to educational institutions and others, WBI uses the 3650-3700 MHz band in a point-to-point architecture.

CenturyLink claims that there are 31 living units in WBI's coverage area that should be designated as "unserved."<sup>3</sup> To support this allegation, CenturyLink relies on two assumptions. First, it asserts that the National Broadband Map shows that WBI covers an area of more than 10 "unbroken" miles, which it considers to be

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<sup>2</sup> Attached as Exhibit 1 hereto is the Declaration of Forbes H. Mercy, WBI's President. Mr. Mercy also serves on the Board of Directors of the Wireless Internet Service Providers Association ("WISPA").

<sup>3</sup> See Petition at 6, Exhibit C and Exhibit D.

“implausible.”<sup>4</sup> Second, CenturyLink argues that the State of Washington did not “fully validate” the mapping information provided to it by wireless Internet service providers (“WISPs”) like WBI. From this, and applying its own biased methodology, CenturyLink concludes that there are precisely 31 living units in WBI’s coverage area that are actually “unserved” and available for Connect America Fund (“CAF”) Phase I subsidies.

Upon receiving the Petition, on June 29, WBI President Forbes Mercy wrote to CenturyLink requesting information that would help explain CenturyLink’s claims. On July 3, WBI received a response from CenturyLink stating that the National Broadband Map depicts WBI’s coverage area as “neatly defined, with straight-edge boundaries” that “stretches continuous and uninterrupted – without any gaps in coverage – for approximately 30 miles in some directions, despite line-of-sight and power limitations inherent in the unlicensed and lightly-licensed spectrum typically used by WISPs.”<sup>5</sup> CenturyLink described WBI’s mapped coverage as “highly suspect” and reiterated its assertion that the State lacked the resources to “fully validate” WISP service in the State.<sup>6</sup>

### **Discussion**

Under long-standing precedent, an applicant seeking waiver of a Commission rule has the burden to plead with particularity the facts and circumstances that warrant such action.<sup>7</sup> The *WAIT Radio* case holds that a waiver proponent “faces a high hurdle even at the starting gate” to obtain the relief it requests.<sup>8</sup> Waiver of the Commission’s rules is

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<sup>4</sup> *Id.*

<sup>5</sup> A copy of the letter is attached hereto as Exhibit 2.

<sup>6</sup> *Id.*

<sup>7</sup> See *Columbia Communications Corp. v. FCC*, 832 F.2d 189, 192 (D.C. Cir. 1987) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 644, 666 (D.C. Cir. 1968)).

<sup>8</sup> 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) (“*WAIT Radio*”).

appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.<sup>9</sup>

CenturyLink utterly fails to meet its burden. It is wrong on the facts and wrong on its assumptions, and thus reaches the wrong conclusion. Further, CenturyLink refuses to acknowledge that the State may not have “fully validated” CenturyLink’s own coverage claims. There is a reason the Commission prudently decided to rely on the National Broadband Map as the sole source of broadband coverage, and CenturyLink’s frivolous Petition is proof-positive of the wisdom of the Commission’s decisions.

First, wireless coverage of large areas is not “implausible,” but rather common. Like many other WISPs, WBI uses a combination of unlicensed and lightly licensed frequencies, primary towers and access points to fill in areas that cannot be reached by the primary towers. Instead of acknowledging this fact, CenturyLink relies on a declaration from Peter Copeland, its Director of Regulatory Operations, who makes certain assumptions about fixed wireless coverage.<sup>10</sup> Mr. Copeland may have “worked extensively on cost modeling related to the provision of telecommunications services, including mobile wireless services,” but professes to have no experience in fixed wireless propagation analysis.<sup>11</sup> His assumptions are not only uninformed, but wrong.

As stated in Mr. Mercy’s Declaration, WBI complies with mapping requests by hand-drawing its coverage as requested by Sanborn, the Washington State mapping coordinator. In fact, the mapping information WBI provides is very conservative because

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<sup>9</sup> See *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Notably, CenturyLink does not cite a single rule for which it is seeking waiver.

<sup>10</sup> Mr. Copeland’s Declaration (“Copeland Declaration”) is Exhibit A to the Petition.

<sup>11</sup> Copeland Declaration at 1.

it *excludes* areas where WBI's wireless signal cover or where WBI does not market its services. As Mr. Mercy states:

The coverage area that I map is based on where WBI can provide quality service that is not affected by foliage or terrain, and which is within a reasonable range of one of WBI's towers and access points. I do not include areas that WBI may be able to serve with a poor quality service. As a result, the maps that WBI provides to Sanborn actually *understate*, not overstate, our coverage.<sup>12</sup>

In addition, the long appendages on the WBI map represent areas where WBI provides point-to-point service.

Mr. Mercy's Declaration explains the "neatly defined" areas "with straight-edge boundaries" – WBI drew these lines to include the areas it covers with quality service and to exclude covered areas where it chooses to not provide service. CenturyLink's Petition wrongly fails to consider these facts, instead relying on generalities and speculation that are simply untrue.

Assuming *arguendo* CenturyLink's claim of implausible coverage has merit, it has not proven that there are 31 living units that should be re-designated to be in "unserved" areas. CenturyLink provides no declaration to confirm that the State of Washington did not "fully validate" submitted by WBI to Sanborn. But even if CenturyLink's claim is true, it provides no evidence that the map overstates fixed wireless coverage in the areas WBI covers. As stated in Mr. Mercy's Declaration, CenturyLink cannot truthfully make this argument because WBI's map actually *understates* actual coverage. But even if this fact were ignored, CenturyLink has not identified where the 31 living units are located.

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<sup>12</sup> Mercy Declaration at 2 (emphasis in original).

In sum, in order to prevail, CenturyLink would have to show that the National Broadband Map is inaccurate, that it overstates coverage, and that there are precisely 31 living units that are actually “unserved” and eligible for subsidies. But CenturyLink can’t make any of these showings, so its argument never leaves the *WAIT Radio* starting gate.

CenturyLink’s arguments are as unverified as the information it says the State did not verify. But to take the hypocrisy of CenturyLink’s claims a step further, it would have the Commission believe that the State did not “fully validate” mapping information data submitted only WBI and other WISPs, and that the coverage data for CenturyLink is completely accurate and fully validated. A more likely conclusion is that the State probably accepted CenturyLink’s coverage data at face value as well. But CenturyLink wants only WBI (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.

The Commission sought to avoid subjecting the National Broadband Map to individual challenges, and expressly decided that it would not engage in such processes.<sup>13</sup> By filing the Petition, CenturyLink ignores the Commission, and in so doing illustrates

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<sup>13</sup> See *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); *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.

the wisdom of retaining the National Broadband Map as the sole source to determine “unserved” areas eligible for CAF Phase I funding.

### **Conclusion**

CenturyLink’s Petition fails to consider relevant facts and is predicated on a series of flawed assumptions and conjecture. CenturyLink cannot leave the starting gate to meet the “high hurdle” it faces. The Commission should dismiss CenturyLink’s Petition with respect to WBI.

Respectfully submitted,

**WASHINGTON BROADBAND, INC.**

Date: July 12, 2012

By: /s/ Stephen E. Coran  
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*Its Attorneys*

## **Exhibit 1**

## **Declaration of Forbes H. Mercy**

My name is Forbes H. Mercy, and I am President of Washington Broadband, Inc. (“WBI”). I am making this Declaration in support of WBI’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. WBI is a wireless Internet service provider (“WISP”) that provides fixed wireless broadband service to residential, educational, public safety and business customers in the Yakima, Washington area. We use unlicensed spectrum in the 2.4 GHz band, 5 GHz band and, to a lesser extent, the 900 MHz band. WBI also uses “lightly licensed” spectrum in the 3650-3700 MHz band. Our customers are in the Yakima urban area as well as the rural areas around the city. In many areas, we are 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. WBI is self-funded and receives no federal broadband subsidies.

2. WBI’s network consists of 17 towers. In many cases, we use the 3650-3700 MHz band and unlicensed bands for point-to-multipoint broadband service with directional antennas. Our towers are, on average, about 10 miles apart, with access points in between to fill in areas that cannot receive a quality signal from one of the towers. These areas are represented in the map (Exhibit D to the Petition) by the larger areas. In other cases, we use the 3650 MHz band to provide point-to-point service for backhaul and connectivity to public safety and educational facilities. These areas are shown on the

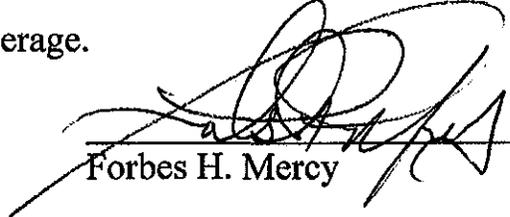
Exhibit D map as long appendages, and represent coverage along the point-to-point link from endpoint to endpoint.

3. Twice a year, as requested, WBI submits information to Sanborn, the State of Washington's mapping contractor. Sanborn provides WBI with a map, and I draw in by hand WBI's coverage area. WBI provides this information to Sanborn, and on occasion the Washington state mapping coordinator contacts me with questions. The Washington State map that CenturyLink included in Exhibit D of its Petition replicates the map I provided to Sanborn.

4. The coverage area that I map is based on where WBI can provide quality service that is not affected by foliage or terrain, and which is within a reasonable range of one of WBI's towers and access points. I do not include areas that WBI may be able to serve with a poor quality service. As a result, the maps that WBI provides to Sanborn actually *understate*, not overstate, our coverage.

5. I have read CenturyLink's Petition and I believe that its assumptions about coverage are false and misleading. First, as stated above, CenturyLink's methodology does not account for access points that are located within WBI's network. Second, because of the quality control I ascribed to WBI's service, the mapping information I provide to Sanborn understates coverage. Third, it is entirely unclear how CenturyLink determined that there are precisely 31 living units that are not covered by our signal, and CenturyLink does not disclose where these homes are.

6. I do not know the extent to which the State of Washington verify the information WBI provides, or what any company – including CenturyLink – may provide. But I do know that, verified or not, the Washington State map that CenturyLink included with its Petition understates WBI's coverage.

  
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Forbes H. Mercy

July 10, 2012  
Date

## **Exhibit 2**



1801 California Street, 10<sup>th</sup> Floor  
Denver, Colorado 80202  
Phone 303 992-2503  
Facsimile 303 896-1107

**Craig J. Brown**  
Associate General Counsel

Forbes Mercy  
President  
Washington Broadband, Inc.  
3201 W. Nob Hill Blvd.  
Yakima, WA 98902

July 3, 2012

Dear Mr. Mercy:

This letter responds to your June 29, 2012 email regarding CenturyLink's Petition for Waiver filed with the Federal Communications Commission ("Commission") on June 26, 2012. In the Petition, CenturyLink seeks authority to use CAF Phase I funds to deploy broadband to areas that, according to the National Broadband Map ("NBM"), are served by certain Wireless Internet Service Providers ("WISPs") but that, according to CenturyLink's data, those WISPs cannot fully serve. In some cases, the WISP coverage areas shown on the NBM are facially implausible, so that some customers within those areas may receive no WISP service at all. In other cases, the listed WISPs share many or all of the same core attributes as satellite broadband service, which the Commission excluded in identifying areas that are "unserved" for CAF I purposes. If the Commission grants the Petition, CenturyLink will be able to bring the benefits of wireline broadband services to consumers in the areas served by these WISPs.

In the case of your company, CenturyLink identified Washington Broadband as one of the WISPs in Washington State with an implausible coverage area in the NBM. As shown in Exhibit D of the Petition, the NBM purports to show Washington Broadband's coverage area as neatly defined, with straight-edge boundaries.<sup>1</sup> That purported coverage area also stretches continuous and uninterrupted—without any gaps in coverage—for approximately 30 miles in some directions, despite the line-of-sight and power limitations inherent in the unlicensed and lightly licensed spectrum typically used by WISPs. As noted on your website, "[b]locked line of sight from [a potential customer's] home/office and [Washington Broadband's] tower (trees or new construction)" can negatively affect Washington Broadband's ability to serve that location.<sup>2</sup> These characteristics should have made your purported coverage area in the NBM highly suspect. However, while the state Broadband Office performed a limited verification of WISP-submitted data, it lacked the resources to fully validate WISP service areas in Washington State.

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<sup>1</sup> A copy of the map for Washington Broadband is attached to this letter.

<sup>2</sup> <http://www.wabroadband.com/overview.html>.

Given these circumstances, CenturyLink has asked the Commission for authority to use CAF I funds to deploy broadband service to the approximately 31 housing units in CenturyLink's serving territory that fall within Washington Broadband's purported coverage area in the NBM.

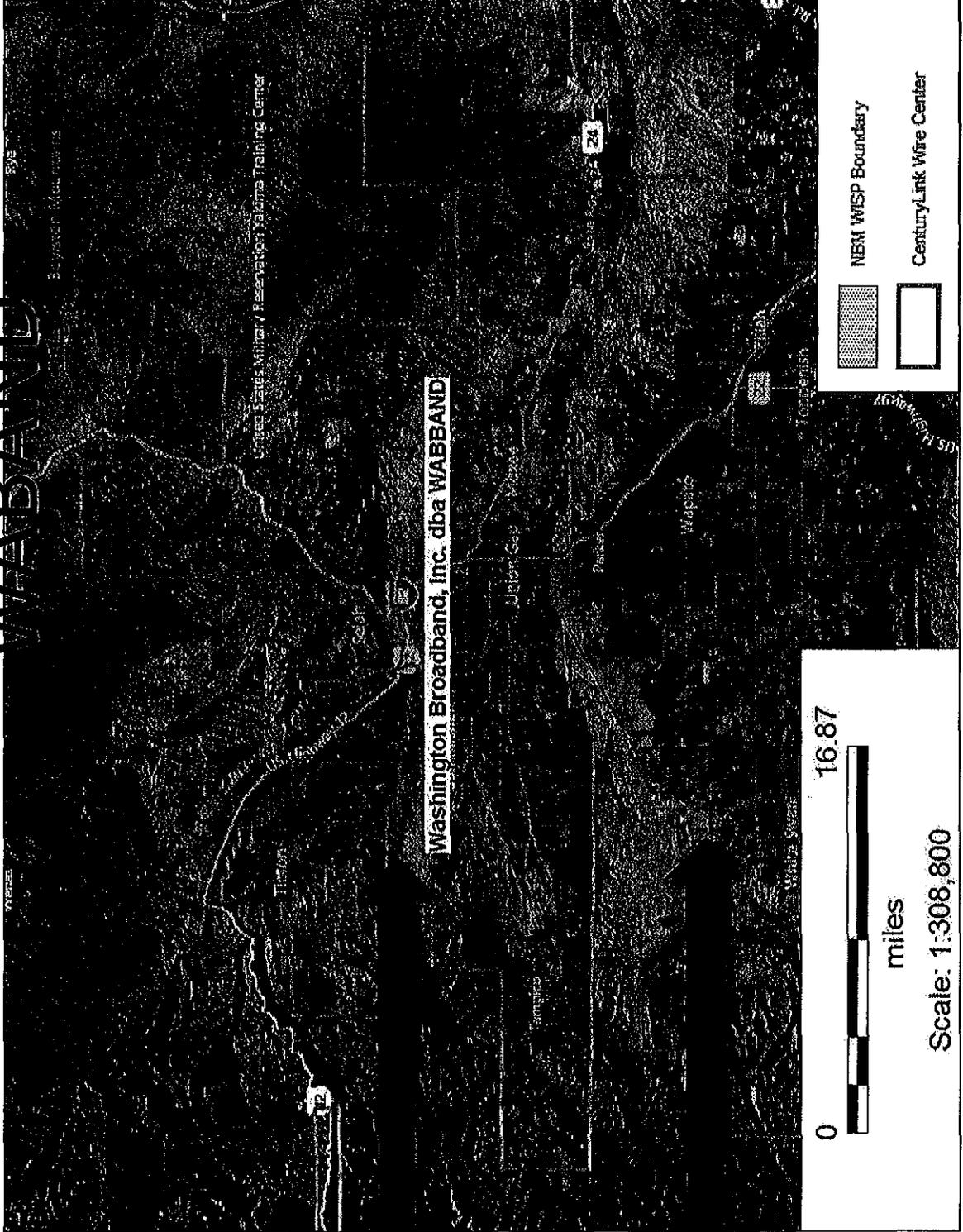
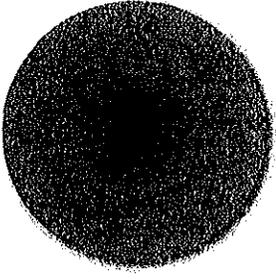
If you have further questions on this matter, do not hesitate to contact me.

Very truly yours,

/s/ Craig J. Brown

# WABAND

10 Mi Diameter



# Notes:

- Page 1: Area much greater than 10 miles of unbroken coverage