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 THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION TO PETITION FOR WAIVER

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July 12, 2012

Summary

The Wireless Internet Service Providers Association ("WISPA") strongly opposes the Petition for Waiver ("Petition") that CenturyLink filed with the Commission on June 26, 2012. The Petition falls far short of the *WAIT Radio* "high hurdle" that CenturyLink must overcome to achieve the relief it requests, and the Petition must therefore be dismissed or denied.

CenturyLink's Petition seeks waiver in two separate circumstances. First, where a state has not verified data for the National Broadband Map (the "Map"), CenturyLink applies its own methodology to conclude that the mapping information is both inaccurate and overstates fixed wireless broadband. Second, CenturyLink alleges that certain wireless Internet service providers ("WISPs") charge high rates or impose stringent data caps even though, in CenturyLink's opinion, the WISP services may be "technologically inferior" to wireline broadband. In either case, CenturyLink contends that areas that correspond to these concerns should render areas shown as "served" to be "unserved" so that CenturyLink can obtain $32.6 million in additional Connect America Fund Phase I subsidies to serve 42,000 living . As described below and in WISPA's Opposition, CenturyLink's positions are contrary to well-reasoned Commission decisions and are false, flawed and unverified.

In the *USF/ICC Transformation Order*, the Commission adopted a simple, streamlined process for CAF Phase I. In so doing, the Commission stated it would rely on the Map as "a reasonable and efficient means to identify areas that are, in fact, unserved, even if there might be other areas that are also unserved." In the *Second Order on Reconsideration*, the Commission affirmed its decision and refused to allow CAF

Phase I recipients to submit information that could be used to question the accuracy of the Map, expressing concern about the level of proof that would be required to examine each and every challenge.

Notwithstanding these clear pronouncements, CenturyLink contends that the Commission should disregard the Map where, it asserts, WISP coverage is "implausible" because the coverage area shows more than 10 miles of "unbroken" coverage and the particular State has not verified mapping data. In many areas, WISPs may provide ubiquitous coverage to large areas based on system architecture, terrain, spectrum and other factors that CenturyLink and its unqualified Director of Regulatory Operations fail to consider. Further, the failure of a State to verify mapping information – a fact that CenturyLink does not even prove – does not necessarily render the Map inaccurate, and certainly does not mean that WISP coverage is overstated. Nor can CenturyLink avoid the obvious question – if WISP coverage is unverified, inaccurate and overstated, can not the same be said for CenturyLink's coverage areas? Moreover, CenturyLink has not provided specific information on where the "new" alleged unserved living units are located. Resting on faulty assumptions and poor methodology, CenturyLink's claims about overstated coverage do not withstand basic scrutiny.

Likewise unavailing is CenturyLink's attempt to adopt a new definition of "broadband" applicable only to WISPs. Here again, the Commission in the *Second Order on Reconsideration* rejected claims to allow CAF Phase I recipients to re-designate "served" areas as "unserved" based on performance characteristics. But CenturyLink nevertheless asserts that high prices or low data caps – terms it arbitrarily defines based on self-serving methodology – renders WISP service "technologically inferior." Even if

one were to accept this proposition, understanding the reason why a particular WISP charges a particular price or imposes a particular data cap (which can be exceeded by paying a small fee) would be relevant. But CenturyLink offers no explanation, and ignores the fact that other performance metrics might also be used to determine whether an area is unserved. For instance, the Commission could consider a broadband provider's customer service, a criterion CenturyLink might well want to avoid. As this discussion makes clear, the Commission wisely decided to avoid drawing these lines when it adopted the one-time, simple and streamlined Phase I process.

CenturyLink also assumes, based on review of web sites, that certain WISPs provide service only to businesses. This assumption unfairly excludes consideration of "business-class" broadband services that WISPs provide to home-based businesses.

The public interest compels a finding that CenturyLink's arguments lack merit. Given the paucity of proof in its Petition, its highly likely that CenturyLink would, if its waivers are approved, obtain CAF Phase I funding to compete with *unsubsidized* WISPs. The transformation of the Universal Service Fund is designed to avoid this result, not perpetuate it in the manner CenturyLink seeks. CenturyLink totally fails to meet its *WAIT Radio* burden, and its Petition thus should be dismissed or denied.

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To: Chief, Wireline Competition Bureau

OPPOSITION OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION TO PETITION FOR WAIVER

The Wireless Internet Service Providers Association ("WISPA"), pursuant to Sections 1.415 and 1.409 of the Commission's Rules, hereby strongly opposes the Petition for Waiver ("Petition") filed by CenturyLink on June 26, 2012, which seeks to re-designate areas depicted on the National Broadband Map (the "Map") as "unserved" for Connect America Fund ("CAF") Phase I purposes even though the Map identifies the areas as "served" by fixed wireless Internet service providers ("WISPs").[1] CenturyLink

[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

rehashes old arguments that the Commission previously and authoritatively rejected, and its specific claims are technically inaccurate, rely on conjecture and faulty methodology, or attempt to arbitrarily and unilaterally impose a new regulatory regime on WISPs. The Commission got it right when it decided, just a few months ago, that it did not have a sufficient record to adopt CenturyLink's proposals. CenturyLink's targeted attacks on 56 WISPs fare no better. CenturyLink has not met the "high hurdle" necessary for it to justify grant of its waiver and its Petition thus should be summarily dismissed or denied.[2]

Introduction[3]

WISPA represents the interests of WISPs that rely primarily on unlicensed spectrum to provide *unsubsidized* fixed wireless broadband services across the country. Many of the areas where WISPs have established networks are rural and would otherwise be unserved by wireline technologies such as DSL and cable modem because wired platforms may not be able to be economically deployed in these sparsely populated areas. In other areas of the country, WISPs compete with wired services, some of which provide subsidized telephony services.

Under current interpretations, WISPs that provide standalone broadband services are not entitled to Universal Service Fund ("USF") benefits because they are not "telecommunications carriers" as defined under Section 153(49) of the Communications Act of 1934, as. To make matters worse, USF subsidies in high-cost areas have been

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Public Notice established a July 12, 2012 deadline for the filing of responsive pleadings. Accordingly, this Opposition is timely filed.

[2] WISPA anticipates that some of the waiver targets will be responding separately to the Petition.

[3] Attached hereto as Exhibit 1 is the Declaration of Jack Unger, WISPA's FCC Committee Chair. Mr. Unger is a former WISP owner and a nationally recognized technical consultant for WISPs.

used to fund large voice providers like CenturyLink that then use such funding to build broadband facilities that compete with WISPs and other providers.[4]

The new CAF rules are designed to remedy this market inequity, and the Commission wisely elected to rely on the Map to determine whether and to what extent areas are "unserved" and thus available for CAF Phase I support.[5] For CAF Phase I, the Commission also refused to adopt pricing and service metrics that would, if adopted, re-characterize certain areas already served by an unsubsidized broadband provider as "unserved."

Despite these clear and resounding pronouncements, CenturyLink ignores the Commission's mandate and instead uses a waiver process to introduce extraneous, questionable and unproven claims into what is otherwise a clear, simple and certain process. While WISPA is disappointed that it must spend time and valuable resources responding to CenturyLink's allegations, WISPA appreciates the opportunity provided by the Wireline Competition Bureau ("Bureau") to provide a public response on the record.[6]

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[4] One example of the misapplication of federal support is occurring in Western Nebraska, where Hemingford Cooperative Telephone Company is receiving funding for broadband in an area where broadband services are already provided. For a more detailed discussion, see "$10 million USDA FAIL!," available at http://www.wirelesscowboys.com/?p=217.

[5] *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 ¶590.

[6] WISPA notes that CenturyLink appears to have not sought reconsideration of the rules adopted in the *Second Order on Reconsideration. 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*").

Discussion

CenturyLink's Petition seeks waiver in two separate circumstances. First, where the state has not verified mapping results, CenturyLink alleges that "objective indicia indicate that the WISP could not plausibly serve the areas that the [Map] shows it to cover."[7] Second, CenturyLink alleges that certain WISPs charge high prices or impose stringent data caps even though its services may be "technologically inferior" to wireline broadband, and that this should transform their coverage areas from "served" to "unserved."[8] All told, CenturyLink estimates that there are 42,000 additional living units that are shown as served but, under CenturyLink's analysis, would be deemed to be unserved and thereby eligible for CAF Phase I support.[9]

An applicant seeking waiver of a Commission rule has the burden to plead with particularity the facts and circumstances that warrant such action.[10] Under *WAIT Radio*, a waiver proponent "faces a high hurdle even at the starting gate" to obtain the relief it requests.[11] Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.[12]

CenturyLink utterly fails to meet its burden. It has not shown that there are "special circumstances," instead relying on broadside attacks and self-serving methods in a feeble attempt to gain additional federal subsidies so it can better compete with

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[7] Petition at 2. These WISPs are listed in Exhibit C of the Petition.
[8] *Id.* These WISPs are listed in Exhibit B of the Petition.
[9] *See* Petition at 16.
[10] *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)).
[11] *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*").
[12] *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.

unsubsidized, locally based, community-minded WISPs that serve areas that CenturyLink has heretofore elected to not serve. Even if CenturyLink has a legitimate case, there is no public interest reason for the Commission to change course and impose a higher standard of service on WISPs. For the reasons described below and, to the extent necessary, the reasons contained in individual oppositions submitted by the targeted WISPs, the Petition should be summarily dismissed or denied.

I. THE NATIONAL BROADBAND MAP SHOULD REMAIN THE DEFINITIVE SOURCE FOR DETERMINING BROADBAND COVERAGE.

A. The Commission Has Already Considered And Rejected CenturyLink's Arguments.

In the landmark *USF/ICC Transformation Order* transforming the USF, the Commission elected to use the Map and data collected from FCC Form 477 to identify unserved geographic areas for CAF Phase I because "[w]e recognize that the best data available at this time to determine whether broadband is available from an unsubsidized competitor at speeds at or above the 4 Mbps/1 Mbps speed threshold will likely be data on broadband availability at 3 Mbps downstream and 768 kbps upstream, which is collected for the National Broadband Map and through the Commission's Form 477."[13] The Commission stated that while "some have claimed that the National Broadband Map is not completely accurate," use of the Map along with requiring CAF applicants to certify that the area is unserved "is a reasonable and efficient means to identify areas that are, in fact, unserved, even if there might be other areas that are also unserved."[14]

[13] *USF/ICC Transformation Order* at ¶ 590.
[14] *Id.* at n.231.

This should have ended the matter. But in a petition for reconsideration filed by the Independent Telephone & Telecommunications Alliance ("ITTA")[15] and in an ex parte letter filed by ITTA, CenturyLink and other incumbent carriers,[16] the Commission was asked to reverse its decision. Among other things, these parties argued that CAF Phase I recipients should be able to present evidence that the Map is inaccurate because it overstates the amount of fixed broadband coverage. ITTA asked that it be permitted to provide a written certification that there are unserved areas within a census block that are shown on the Map to be served. ITTA also suggested that it should be able to submit "consumer declarations or other supporting evidence" to support a challenge to the Map.[17]

WISPA strongly opposed these proposals, stating that there may be many reasons why the Map might be inaccurate, and that WISPs were not the only broadband providers that may have their service areas inaccurately depicted on the Map.[18] It is possible that the Map overstates the areas where CenturyLink allegedly provides broadband service. It may even be true that CenturyLink is already providing service in areas where it proposes to seek to expand CAF Phase I support pursuant to the petition. As WISPA stated:

> This may be unintentional, but certainly incumbents – like the Telcos – would have an incentive to under-report coverage in order to obtain subsidies for areas alleged to be unserved. The Telcos, or any incumbent broadband provider, should not be permitted to report inaccurate data to NTIA's state mapping contractors and then be rewarded with subsidies to

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[15] *See* Petition for Reconsideration of the Independent Telephone & Telecommunications Alliance, WC Docket No. 10-90, *et al.*, filed Dec. 29, 2011 ("ITTA Petition"), at 3.
[16] *See* letter from Genevieve Morelli, Jeffrey S. Lanning, Kenneth Mason and Eric Einhorn to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 10-90, *et al.*, dated March 6, 2012 ("ITTA Ex Parte Letter").
[17] *Id.* at 3.
[18] *See* WISPA's Opposition to Petitions for Reconsideration, WC Docket No. 10-90, *et al.*, filed Feb. 9, 2012, at 4-5 ("WISPA Opposition"); letter from Stephen E. Coran, Counsel to WISPA, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 10-90, *et al.*, dated March 15, 2012 ("WISPA Ex Parte Letter").

> cover areas deemed by the Map to be "unserved" but which are actually served.[19]

WISPA's point there, and here, is that all parties must live with the Map as "the best data available at this time"[20] and that no bias in its inaccuracies can be presumed to either overstate or understate coverage for any particular broadband provider. As WISPA stated, "while the Map may in some limited instances be imperfect, it could just as easily understate, as overstate, the presence of fixed broadband service in an "unserved" area. ITTA's proposal is a one-way street that does not account for any errors that understate fixed broadband coverage."[21]

WISPA also objected to ITTA's claims because the process it proposed would introduce delay.[22] Indeed, given the late filing of its Petition – less than a month from the July 24 CAF Phase I certification date -- CenturyLink has put the Bureau in the uncomfortable position of having to act on the Petition within a few days after the July 12 *Public Notice* deadline. Significantly, WISPA also demonstrated in its ex parte letter that ITTA's proposals would require the Commission to engage in arbitrary line-drawing as it considered the alleged facts behind individual challenges.[23]

In the *Second Order on Reconsideration*, the Commission firmly rejected these arguments. The Commission cited two reasons. First, the Commission stated that there is no explanation of how a CAF Phase I recipient would know which locations are unserved by another fixed broadband provider. Second, the Commission observed that it would be time-consuming to obtain customer declarations and that, even so, the customer

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[19] *Id.* at 3.
[20] *USF/ICC Transformation Order* at ¶ 590.
[21] WISPA Opposition at 5.
[22] *See* WISPA Ex Parte Letter at 3.
[23] *See id.*

may not know whether broadband service is offered in the area. The Commission stated that, "[o]n balance, we cannot conclude on the record before us that adopting ITTA's proposed process, which may not significantly increase the number of locations that are likely to receive new broadband, would serve the public interest."[24] The Commission added that "[i]ndeed, by shifting deployments to areas where others *do* serve, ITTA's proposal might lead to *fewer* previously unserved locations receiving service."[25]

For these same reasons, CenturyLink's Petition should be dismissed or denied. Though the Bureau is now unfortunately forced to endure the process the *USF/ICC Transformation Order* and the *Second Order on Reconsideration* sought to avoid, the so-called "evidence" submitted by CenturyLink comes nowhere close to meeting the *WAIT Radio* standard.

B. <u>CenturyLink's Petition Is Based On Flawed And Inaccurate Methodology</u>.

1. CenturyLink Fails To Show That The Map Is Factually Inaccurate.

Notwithstanding the Commission's clear guidance that it was not interested in entertaining individual challenges, CenturyLink through its Petition nonetheless endeavors to twist a simple, one-time Phase I process into 56 separate adjudicatory proceedings.[26] According to CenturyLink, there are six states where state verification of mapping data is incomplete and may overstate WISP coverage. As a substitute for state verification, CenturyLink devises its own methodology to provide, in its not-so-humble words, "strong objective indications on the face of the [Map] that these WISPs could not

[24] *Second Order on Reconsideration* at 5 (footnote omitted).
[25] *Id.* at n.29 (emphasis in original).
[26] There are a total of 56 different WISPs listed in Exhibits B and C. Some are listed more than once.

plausibly serve the areas that the [Map] shows them to cover."[27] Although it never reveals their locations, CenturyLink claims there are 29,899 living units in its wire centers where the Map overstates WISP coverage.

The failure of a state to verify the information collected by its contractor does not make the information inaccurate. Though CenturyLink makes conclusory remarks about the "self-evident" mapping information that shows WISP coverage, it never meets its burden to show that its statements are factually correct. The table below makes this point clear.

State	CenturyLink Allegation	What May Also Be True
Arizona	Uninterrupted coverage within perfect circles that extend many miles from a cell site	Terrain is flat with few obstructions thus allowing circular and contiguous coverage extending beyond five miles from a tower or cell site
		Areas within cells could contain smaller cells to fill in coverage
Washington	WISPs serve areas defined by county boundaries, though some are more granular	Coverage may extend beyond county boundaries such that Map may understate actual coverage
		CenturyLink does not identify location of its claimed living units
Colorado	Office of Information Technology ("OIT") "agrees that many of the areas shown as covered . . . appear overstated"[28]	No declaration from OIT to verify CenturyLink's claim
		No basis for estimated number or location of living units
Oregon	State allegedly "has concerns" with verification procedures	Concerns may be invalid
		No basis for estimated number of or location of living units
North Dakota	State allegedly took WISP-submitted data at face value	Information is not necessarily incorrect, even though it may be unverified
Florida	State allegedly took WISP-submitted data at face value	Information is not necessarily incorrect, even though it may be unverified

[27] Petition at 7.
[28] *Id.* at 6.

As is shown, CenturyLink's "evidence" suffers from the same flaw on which its argument rests – its information cannot be verified. Instead, we are supposed to take CenturyLink's word for it.[29] This is precisely the sort of line-drawing the Commission refused to endorse, and the problems associated with a back-and-forth debate about the Map and alleged inaccuracies are, at best, inconclusive. The Commission, WISPA and other CAF Phase I recipients – indeed, everyone but CenturyLink – are relying on the Map as "a reasonable and efficient means to identify areas that are, in fact, unserved" and are prepared to live with the consequences.

2. CenturyLink's Methodology Is Biased And Relies On Faulty Assumptions, And Therefore Is Misleading And Unreliable.

Even if CenturyLink is correct that certain states did not verify data used to create the Map and that the Map necessarily overstates WISP coverage, CenturyLink's methodology to estimate the number of affected living units is defective, lacks credibility and is misleading. This methodology is contained in the Declaration of Peter Copeland (Exhibit A to the Petition) ("Copeland Declaration"), CenturyLink's Director of Regulatory Operations. Not only does Mr. Copeland approach his role from the perspective of a biased in-house observer rather than an impartial independent consultant, he admits that his background is in economic cost modeling related in some unspecified part to mobile wireless services.[30] Mr. Copeland neither claims nor demonstrates any experience in RF engineering or in fixed wireless broadband, so his qualifications and credibility – and CenturyLink's – are extremely suspect.

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[29] Moreover, CenturyLink would have the Commission believe that *only* mapping information submitted by WISPs to state contractors is unverified, inaccurate and overstates coverage; it ignores the possibility that its own service areas are also unverified, inaccurate and overstate coverage.

[30] *See* Copeland Declaration at 1. Tellingly, Mr. Copeland's Declaration is not made "under penalty of perjury." *See* Section 1.16.

CenturyLink's next mistake is defining where WISP coverage is, in its words, "implausible" – areas where WISP coverage is shown to extend more than five miles from a single site and where the coverage area appears to not account for terrain.[31] Mr. Copeland explains that even where there are overlapping cell sites, "one would reasonably expect there to be some locations lacking coverage."[32] *But CenturyLink never provides alternative data.* It fails to identify the frequencies that each targeted WISP uses,[33] fails to consider that many WISPs use multiple frequencies to cover terrain-obstructed areas and fails to provide one shred of propagation analysis showing what it believes the "true" coverage to be.[34]

It appears that CenturyLink manufactured its own secret standard to determine the number of living units that are covered on the Map but are in fact unserved. CenturyLink's made-up definitions of "unserved" and "broadband" and its broad generalizations, proffered by an in-house employee with no demonstrable fixed wireless engineering background are invalid, and its failure to demonstrate any RF engineering rigor epitomizes hypocrisy. Certainly, such allegations do not satisfy CenturyLink's *WAIT Radio* burden.

Once exposed, CenturyLink's unsubstantiated and misleading "evidence" remains unproven. CenturyLink provides no compelling factual information that would cause the

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[31] *See id.* at 2-3.
[32] *Id.* at 3-4.
[33] CenturyLink notes that WISPs generally use unlicensed or lightly licensed spectrum in the 900 MHz, 2.4 GHz and 5 GHz bands. *See* Copeland Declaration at 3. (For the record, and to further show Mr. Copeland's lack of qualifications, none of these bands is "lightly licensed.") However, CenturyLink ignores the fact that some WISPs – even those it targets – use the 3650-3700 MHz band and the 2.5 GHz band (including, for example, Broadband South, Polar Communications, Virginia Communications and Beamspeed).
[34] Further, Mr. Copeland's analysis does not differentiate the properties that the various unlicensed bands possess. For example, because it is lower in the band, the 900 MHz band propagates much better than spectrum in the 2.4 GHz and 5 GHz bands.

Commission to abandon the Map and substitute conjecture and faulty methodology. WISPA believes the Commission got it right the first time when it decided that the Map would be the definitive source to determine unserved areas, and got it right the second time on reconsideration when it rejected ITTA's challenge process. The myriad defects in CenturyLink's Petition merely confirm the wisdom of those Commission decisions.

II. THE COMMISSION SHOULD REJECT CENTURYLINK'S ATTEMPT TO IMPOSE NEW PERFORMANCE REQUIREMENTS ON FIXED WIRELESS BROADBAND PROVIDERS.

A. The Commission Has Already Considered And Rejected CenturyLink's Arguments.

CenturyLink's next gambit is to attack the service performance of certain WISP networks by alleging that they exhibit characteristics that led the Commission to disregard satellite broadband service for determining unserved areas for purposes of CAF Phase I.[35] According to CenturyLink, the presence of capacity constraints, line-of-sight coverage limitations, high prices and data caps, standing alone or in combination, should render an area served by a WISP to be considered unserved.

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."[36] The Commission expressly declined to adopt specific capacity requirements, even for CAF Phase I

[35] *See* Petition at 7.
[36] *USF/ICC Transformation Order* at ¶ 94. As stated *supra*, the Commission relies on the 3 Mbps downstream and 768 upstream metric used to create the Map.

recipients,[37] and adopted a one-time fixed payment of $775 per location rather than relying on a detailed economic cost model.[38]

In the *Second Order on Reconsideration*, the Commission flatly rejected CenturyLink's efforts to impose additional service quality standards on WISPs "for several reasons."[39]

> 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 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.*[40]

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

To illustrate the folly of using CenturyLink's self-selective and arbitrary criteria, CenturyLink failed to suggest that other performance metrics might also be used to determine whether an area is unserved. For instance, CenturyLink could have asked the Commission to deny Phase I support to unserved areas within its wire centers. But

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[37] *See id.* at ¶ 98.
[38] 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.
[39] *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.
[40] *Second Order on Reconsideration* at ¶ 15 (footnote omitted) (emphasis added).

CenturyLink did not do so, knowing full well that this result would prevent it from receiving subsidies. Or CenturyLink could have asked the Commission to consider the incumbent provider's level of customer service. But CenturyLink did not do so, perhaps recognizing that WISPs often provide superior service.[41] Or CenturyLink could have asked the Commission to favor local ownership. But CenturyLink did not do so, perhaps because it knows that most WISPs are locally owned and CenturyLink itself is based in Monroe, Louisiana. These examples demonstrate that the Commission wisely decided to avoid imposing service performance requirements on incumbent fixed broadband providers.

B. CenturyLink's Petition Is Based On Flawed Methodology.

Assuming the Commission changes course and neglects these significant deficiencies, CenturyLink must again rely, to its detriment, on its own contrived methodology to support the outcome it seeks. As stated in the Copeland Declaration, CenturyLink's analysis is premised on a WISP's "ability to serve all of the potential subscribers in that area with broadband services of reasonable quality at a reasonable price."[42] Significantly, and unfortunately for CenturyLink, the Commission did not authorize potential CAF Phase I recipients to impose their own standards on others – "reasonable quality and reasonable price" are not standards the Commission has chosen to consider. Rather, it adopted a very simple speed test so it could expedite funding to CenturyLink and other price cap carriers. CenturyLink's reliance on a made-up definition dooms its analysis at the outset.

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[41] By comparison, here is one survey of CenturyLink's broadband service: http://reviews.centurylink.com/7108/RP1000/centurylink-high-speed-internet-40mbps-reviews/reviews.htm?sort=rating&dir=asc (visited July 3, 2012). Note the critical observations about the reliability of CenturyLink's service.

[42] Copeland Declaration at 2.

If the Commission nevertheless decides that it should consider the four performance factors proposed by CenturyLink, the methodology CenturyLink uses lacks rigor and thoroughness, and illustrates the arbitrary line-drawing the Commission desires to avoid. With respect to price, CenturyLink concluded that if the price offered by a WISP exceeds $720 per year, it is not offering service at a "reasonable price." The dollar amount was apparently selected by CenturyLink because it exceeds CenturyLink's price for DSL service of 1.5 Mbps at $45 per month (service plus modem rental) and because it is similar to satellite broadband service.[43] But CenturyLink makes no effort to explain *why* a WISP may sometimes charge a higher price. In many cases, WISPs charge more because the cost to install a customer is higher and may include inside wiring, mounting of an outdoor antenna and/or construction of a rooftop mast, to name a few factors. Or the first-year cost may include a customer's one-time purchase of equipment rather than the lower cost per month for a long-term equipment rental. Without any understanding of the deployment costs and the profit margin, CenturyLink's pricing argument is irrelevant.

CenturyLink also argues that WISPs imposing stringent data caps should render the areas that WISPs serve as "unserved" for CAF Phase I purposes.[44] Here again, CenturyLink's methodology relies on a comparison to satellite broadband service to set a monthly threshold of 25 GB. CenturyLink acknowledges that not all WISPs are below this threshold, but assumes, without any data, that those that impose caps below 25 GB do so because of capacity constraints. CenturyLink makes no effort to explain how many customers are above or below the cap in a given market – the percentage of customers who exceed their data cap may be as low as the 0.5 percent of CenturyLink's customers

[43] *See* Petition at 12; Copeland Declaration at 5.
[44] *See* Petition at 14; Copeland Declaration at 5.

that exceed its limits. CenturyLink also fails to realize that WISP customers can, for a reasonable fee, exceed their data cap and consume more data. It also fails to propose a data cap that it considers satisfactory for CAF Phase I purposes, leaving the Commission without any record and no time to verify information. Simply suggesting that a data cap is too low does not give the Commission enough information to decide what data cap level and terms might be appropriate.

C. To The Extent They Exist, Capacity Constraints And Line-of-Sight Limitations Should Not Determine Whether An Area Is Unserved.

CenturyLink generally claims that WISPs have capacity constraints that will "hamstring" their ability to expand service and increase speeds.[45] CenturyLink's claims are specious because every consumer-grade broadband technology architecture including cable and DSL shares backhaul links at some point between the customer premises and the broadband provider's network operating center thus experiencing a "capacity constraint."[46] CenturyLink's Petition appears to make no effort to identify those WISP networks that CenturyLink asserts would be compromised in the future. CenturyLink's generic assumption applies to its network architecture as well and clearly is invalid in the context of this waiver proceeding.

Further, consideration of the *future* ability of WISPs to expand service is not appropriate for CAF Phase I, a one-time program based on data depicted on the *current* version of the Map. As stated in the *Second Order on Reconsideration*, "[t]he 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

[45] Petition at 8.

[46] The only possible exception would be a customer that is physically located so close to the broadband provider's network operating center that it could be served by a single fiber strand that is home-runned directly to the network operating center.

broadband entirely, rather than to drive faster speeds to those who already have service."[47] The Commission should not contravene its own on-the-record decision to make market-by-market waiver decisions based on conjecture about future bandwidth constraints or future spectrum availability and needs.[48]

Likewise, CenturyLink makes generalized claims that WISPs experience line-of-sight issues and thus do not offer a "substitute" for broadband services.[49] CenturyLink either ignores or is unaware of the fact that many WISPs use the 900 MHz band, which has the ability to deliver fixed wireless broadband service in the presence of many obstacles. CenturyLink provides no propagation analysis showing that any of the WISPs listed on Exhibit B are not using 900 MHz to cover specific areas that may otherwise be unserved, or that CenturyLink has the means – even with a $775 subsidy – to cover the area in question. An area may be very difficult or expensive for CenturyLink to serve with its wired technology; indeed, CenturyLink has already chosen not to provide service – subsidized or unsubsidized – to particular living units that it now, apparently, wants to serve with CAF Phase I support. CenturyLink doesn't state which of the subject WISPs, if any, it believes are limited by line-of-sight and makes no mention of how many living units in each targeted area are subject to line-of-sight limitations. CenturyLink's generalized attack has no has no credibility and therefore has no place in determining which areas should or should not receive Phase I subsidies.

The CAF Phase I program is designed to benefit CenturyLink and other subsidized price cap carriers with one-time support. WISPs gain no financial benefit

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[47] *Second Order on Reconsideration* at ¶ 15.
[48] WISPA notes that the Commission has or will be initiating several proceedings that could make additional spectrum available for fixed uses, including TV white spaces, the 4.9 GHz band and certain 5 GHz bands.
[49] Petition at 11.

from this process, but rather face the prospect that CenturyLink will use the subsidies to compete with WISPs. Nothing is more telling than CenturyLink's flawed and feeble Petition, which is pocked with glittering generalities, wild conjecture, poor methodology and inflammatory arguments. CenturyLink's attempt to impose on WISPs, and only WISPs, a contrived set of performance characteristics contradicts the Commission's decisions and rationale. The Petition should be summarily dismissed or denied.

III. THE COMMISSION SHOULD REJECT CENTURYLINK'S CLAIM THAT AREAS COVERED BY BUSINESS-ONLY WISPS SHOULD BE DEEMED UNSERVED.

CenturyLink lists six WISPs that it claims provide broadband services only to businesses, which should not be considered for purposes of determining whether an area is unserved.[50] Its argument consists entirely of visits to web sites that apparently state that these WISPs provide service to businesses. But this misses the point. The Map is predicated on fixed wireless signal *coverage*, and is not based on whether the WISP (or any broadband provider) offers service to living units. Moreover, many consumers operate businesses from their residences and require "business class" broadband service for those locations.[51] Therefore, it is simply incorrect to suggest that a residence cannot obtain broadband service from the WISP, despite CenturyLink's claim to the contrary. CenturyLink's one-sided and reed-thin speculation thus does not justify waiver.

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[50] *See* Copeland Declaration at 6 and Exhibit B.

[51] *See, e.g.*, www.freewirebroadband.com/company (identifying company as a provider of "business-class" broadband); www.airpowered.com/what-is-airpowerd (same). The other web sites identified by CenturyLink as business-only WISPs do not expressly preclude provision of broadband service to residences. *See, e.g.*, www.southwesternwireless.com (no preclusion of residential broadband service); www.airband.com (same); www.erfwireless.com (same).

IV. THE PUBLIC INTEREST DOES NOT SUPPORT GRANT OF THE REQUESTED WAIVERS.

The above discussion demonstrates beyond a doubt that CenturyLink has not met the "high hurdle" required by *WAIT Radio* and its progeny. If, however, the Bureau nevertheless concludes that CenturyLink has presented "special circumstances," it has not satisfied the second part of the waiver analysis – that deviation from the rule would serve the public interest.

First, granting CenturyLink its waivers would be tantamount to endorsing CenturyLink's failure to provide service in the areas where it seeks funding. CenturyLink has had time to deploy broadband service in many areas of the country, but has elected not to. It is set to receive millions of dollars in federal subsidies to offer service to areas that are truly unserved. It should not also be rewarded for ignoring deployment in areas where unsubsidized competitors are already providing broadband service.

Second, deviating from the rule here would entitle CenturyLink to an additional $32.6 million in funding, much of which would be used to serve areas that can already obtain broadband access from a WISP. The transformation of USF was designed to eliminate waste, fraud and abuse, not to open up new avenues for wasting taxpayer dollars.

Third, grant of CenturyLink's Petition would render the Map virtually meaningless for CAF Phase I and, perhaps, CAF Phase II. Under the American Recovery and Reinvestment Act of 2009,[52] NTIA was authorized to spend up to $350 million for

[52] American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, 123 Stat. 115 (2009). Detailed information about the requirements and funding of the National Broadband Map are contained in

states to develop the Map. Waiver would imply that this important and evolving resource is an unreliable diversion with little utility in directing broadband funding to unserved areas, only to be replaced by an unreliable, complicated and vague process that would make every area subject to individualized scrutiny. Eliminating the Map as the primary means to determine the location of unserved Americans would undermine public and governmental confidence in both the Map and the CAF program. The Commission made the correct public interest choice when it stated that the Map "is a reasonable and efficient means to identify areas that are, in fact, unserved, even if there might be other areas that are also unserved."[53]

In sum, the uncomplicated and streamlined process the Commission established and affirmed heavily outweighs any possible public interest benefit that waiver would achieve.

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the Notice of Funds Availability published by NTIA. *See* State Broadband Data and Development Grant Program, *Notice of Funds Availability and Solicitation of Applications*, 74 FR 32545 (July 8, 2009).

[53] *USF/ICC Transformation Order* at n.231.

Conclusion

CenturyLink's Petition does not meet the *WAIT Radio* standard. It relies on conjecture, innuendo and surmise in an effort to discredit WISPs and the National Broadband Map. The Bureau should not depart from the wise and reasoned decisions designed to make the CAF Phase I process a simple and uncomplicated way to provide support to Americans that truly cannot receive the benefits of fixed broadband service. The Bureau should dismiss or deny the Petition for Waiver.

Respectfully submitted,

July 12, 2012

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

By: */s/ Elizabeth Bowles, President*
/s/ Jack Unger, Chair of FCC Committee

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Exhibit 1

Declaration of Jack Unger

My name is Jack Unger, and I am the FCC Committee Chair of the Wireless Internet Service Providers Association ("WISPA"). I formerly owned and operated a wireless Internet service provider business and I now serve as a technical consultant to fixed wireless broadband providers. I am making this Declaration in support of WISPA's Opposition to a Petition for Waiver filed on June 26, 2012 by CenturyLink. I have read WISPA'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.

Jack Unger

Date July 12, 2012