

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

CenturyLink Petition for Limited Waiver
of Certain High-Cost Universal Service
Rules

WC Docket No. 10-90
WC Docket No. 05-337

**COMMENTS OF THE
CALIFORNIA PUBLIC UTILITIES COMMISSION
AND THE PEOPLE OF THE STATE OF CALIFORNIA**

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July 12, 2012

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I. INTRODUCTION AND SUMMARY

The California Public Utilities Commission and the People of the State of California (CPUC or California) submit these comments in response to the Public Notice released by the Wireline Competition Bureau of the Federal Communications Commission (FCC or Commission) on June 27, 2012.¹ The Wireline Competition Bureau seeks comment on a Petition for Limited Waiver of Certain High-Cost Universal Service Rules filed by CenturyLink on June 26, 2012.² Specifically, CenturyLink requests a limited waiver of 47 C.F.R. § 54.312(b), which requires recipients of Connect America Fund (CAF) Phase I to deploy broadband service to locations “shown as unserved by fixed broadband on the then-current version of the National Broadband Map.”³

The CPUC urges the Commission to reject CenturyLink’s petition. California is concerned that if CenturyLink’s petition is granted for the reasons stated, the FCC may invite similar waiver petitions by price cap carriers that wish to accept CAF Phase I funds in order to construct broadband facilities in the California. The CPUC is concerned that granting CenturyLink’s request will create a precedent, leading potentially to similar waivers being granted to price cap carriers in California. If that were to occur, the CPUC anticipates the waivers could well discourage rather than encourage the deployment of

¹ Public Notice, DA 12-1007, WC Docket Nos. 10-90-, -5-337, released June 27, 2012.

² CenturyLink Petition for Waiver (Petition), WC Docket No. 10-90 et al. (filed June 26, 2012); *see also Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and FNPRM*); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011); 47 C.F.R. § 54.312(b).

³ Petition, p. 1, footnote 1.

appropriate and efficient broadband technologies in California by requiring Wireless Internet Service Providers (“WISPs”) to compete with federally-subsidized price cap providers, even though WISPs may already offer service to a substantial number of households within a portion of their service areas.

II. DISCUSSION

In the petition, CenturyLink requests that the FCC designate as unserved several areas within CenturyLink’s service territory which currently appear on the National Broadband Map (NBM) as “served” by WISPs. Designating as “unserved” areas that are deemed already “served” would allow CenturyLink to use CAF Phase I funds to subsidize the construction of broadband facilities in these areas. While the areas discussed in CenturyLink’s petition are not located in California, and thus do not directly implicate the CPUC’s jurisdiction, approximately \$139 million in CAF funding has been allocated to price cap carriers that operate in California.⁴

The CPUC is California's recipient of the State Broadband Initiative (SBI) grant and is responsible for the California broadband availability data reflected on the National Broadband Map (NBM). In addition to serving as the basis for the FCC to determine what areas should receive broadband grants, the same data populate California's state Broadband Availability Map. The CPUC uses that same data to populate its own state broadband availability map, and to identify areas eligible for broadband deployment

⁴ Of this amount approximately \$47.8 million is available to AT&T, \$19.7 million is available to Verizon, and \$71.9 million is available to Frontier Communications. *See* FCC Public Notice in WC Docket Nos. 10-90, 05-337, (DA 12-639), rel. April 25, 2012.

grants from the California Advanced Services Fund (CASF), a state program intended to subsidize deployment of broadband facilities in unserved and underserved areas in California. Accordingly, California has a strong interest in any FCC proceeding which implicates the interpretation of the broadband data we have gathered, and potentially affects the scope of work to be done in the validation of the data in our role as SBI grantee.

A. The FCC should use extreme caution in disregarding WISP coverage areas indicated on the NBM.

CenturyLink claims that the NBM designates several areas within its telephone service territory as currently served by certain WISPs, even though it is “facially implausible” that these areas are being served, given the nature of the technology WISPs use.⁵ In addition, CenturyLink claims that some WISPs, like satellite providers, charge substantially higher retail prices and/or set more stringent data caps than wireline carriers.⁶ Because the NBM identifies these areas as served, CenturyLink argues that it is being denied the ability to use CAF Phase I funding to deploy broadband facilities to “tens of thousands” of households in these areas where, CenturyLink claims, customers are being denied the opportunity to order quality broadband services.⁷

CenturyLink proposes to remedy this situation by designating as unserved for purposes of CAF Phase I funding specific areas within its service territory, which are currently identified as “served” on the NBM. CenturyLink proposes to designate these

⁵ Petition at p. 1.

⁶ *Id.*

⁷ *Id.* at 3.

areas if either one of two conditions is met: (1) the community in question lies within a state that has not independently verified the WISP coverage areas shown on the NBM, and “objective indicia” demonstrate that the WISP could not plausibly serve the areas the NBM shows it covers, or, (2) the WISP, like satellite providers, imposes unusually high retail prices or unusually stringent data requirements in comparison to wireline service providers.⁸

B. CenturyLink’s first criterion for waiver demonstrates a misunderstanding of the role of state broadband data validation.

CenturyLink’s first proposed criterion for designating an area as unserved is actually a two-pronged test. The first prong requires that a state has not independently verified whether the area currently designated as served by WISPs is, in fact, served. The second prong of that criterion requires the existence of “objective indicia” demonstrating that the WISP could not plausibly serve the areas that the NBM shows it covers.⁹ In other words, in the absence of independent state verification, CenturyLink proposes the FCC designate the entire service area of WISPs appearing on the NBM as “unserved” if the coverage area represented on the map exhibits features which CenturyLink claims are inconsistent with the fixed wireless technology WISPs use. The areas that would be designated as unserved, under CenturyLink’s proposal, would include areas represented as showing continuous and uninterrupted coverage for a distance of greater than 10 miles

⁸ *Id.* at 2.

⁹ *Id.* at 2.

(i.e., a circular area with a radius of fewer than 5 miles) or coverage that is continuous and uninterrupted despite the existence of mountainous and/ or hilly terrain.¹⁰

In its proposal, CenturyLink shows a lack of understanding of the meaning of validation SBI grantees perform, and accordingly, the proposal would place an unacceptable and unworkable burden on the states to prove that submitted broadband data are correct. In most instances, validation techniques grantees employ can only identify those areas where both a provider claims coverage for a certain area, and such coverage can be confirmed. The inability of a state SBI grantee to validate a particular "served" area, however, does not prove a lack of availability; rather, it just shows that the availability cannot be confirmed. The NTIA itself engages in a similar validation process before publishing data on the NBM. As the FCC explained in adopting the NBM:

After integration, NTIA and the FCC review each grantee's process and also review each NBM record by comparing it to other government and third-party datasets. Comparisons to other existing datasets help to identify the extent to which data collected under this effort matches availability and speed information that have been collected elsewhere. Multiple matches can help solidify confidence in a given result, **but because data this granular has never been collected before, non-matches do not indicate that the information is inaccurate.**¹¹

Wireline, fixed wireless, and mobile broadband services each present their own validation challenges. WISPs' submitted data raise unique and particularly difficult issues, in part because WISPs tend to be smaller companies without sophisticated

¹⁰ *Id.*, Exhibit A at 2-3.

¹¹ National Telecommunication and Information Administration, National Broadband Map, <http://www.broadbandmap.gov/about/technical-overview/data-review> (last visited Jul. 7, 2010) (emphasis added).

mapping capability.¹² Yet, because WISPs may have the most cost efficient available technology for providing broadband in some rural areas, the FCC should tread cautiously in considering whether to provide CAF Phase I for areas where service WISP service appears on the NBM. The FCC must strive to avoid subsidizing a second entrant, or discouraging further private investment by WISPs. CenturyLink's proposal would risk doing just that, particularly if the FCC were to use same process following Phase I.

The second prong of CenturyLink's first criterion for waiver should not be considered sufficient for WISP data to be disregarded. While the proposal to use “objective indicia” would show that service throughout WISP designated service areas is implausible, that claim should not be sufficient in and of itself to eliminate a WISP's entire claimed service area. Even if one agrees that the presence of the “objective indicia” CenturyLink identified proves that a particular WISP's coverage area is overstated, granting CenturyLink's request to have the entire coverage area deemed unserved without any factual inquiry is highly problematic. The fact that that a WISP's coverage area may be overstated does not mean that portions of the claimed areas are, indeed, unserved. For example, the WISP may have deployed multiple transmitters within its coverage area that enable it to serve a substantial portion of the living units located within it.

¹² One of the best validation methods is use of FCC Form 477 subscriber data to confirm availability. Unfortunately, lengthy delays often occur between the FCC's gathering of the data and its release of the data, thus minimizes the utility of this validation methodology. Using stale Form 477 data to validate WISP coverage areas is particularly problematic because WISPs are able to enlarge their coverage areas relatively quickly.

That said, a process needs to be in place to make sure areas in reality not served are subsidy-eligible, even if those areas appear as served on the NBM and on state maps. Indeed, for similar reasons, California will soon issue guidelines that will establish a process for parties to rebut and confirm the served/underserved/unserved status of geography on its state broadband map, so that state CASF broadband infrastructure grant applications can be challenged.

The CPUC recognizes that implementing the kind of process California is developing in connection with its CASF program may be inconsistent with the FCC's objectives in establishing the CAF Phase I program. Nonetheless, the CPUC does not consider CenturyLink's proposal to be an adequate substitute for a more fact-intensive validation process.

III. CONCLUSION

In sum, in the absence of independent verification or factual inquiry through a process of the kind California is developing, the FCC has no basis to conclude with reasonable certainty that the waiver CenturyLink requests will result in expanding broadband access. Instead, granting CenturyLink's waiver could result in the use of public money to overbuild existing WISP networks which are already capable of providing service to a substantial portion of the living units located within its identified coverage area. This would not only be a waste of public funds, but also could deliver a serious blow to a nascent broadband industry by forcing it to compete with a subsidized competitor. Accordingly, the FCC should reject CenturyLink's petition for waiver even

if agrees that the WISP coverage areas currently shown as served on NMB are inaccurate or overstated.

Respectfully submitted,

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