

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Connect America Phase II Challenge Process)	WC Docket No. 14-93

**OPPOSITION OF CENTURYLINK TO CO-MO COMM, INC.
AND UNITED SERVICES, INC. APPLICATION FOR REVIEW**

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CenturyLink¹ hereby opposes the Application for Review (Application) filed by Co-Mo Comm, Inc. (Co-Mo) and United Services, Inc. (United) seeking review of the Wireline Competition Bureau (Bureau) decision denying their Connect America Fund (CAF) Phase II challenges that asserted that they provide the requisite voice and broadband services in certain census blocks so as to preclude including those census blocks as eligible for CAF Phase II support.² The Bureau correctly determined that the challenges were not supported by sufficient evidence to be sustained; the Application is procedurally defective because it relies upon evidence and arguments that were not first presented to the Bureau for consideration and because it disregards the specific process established for the CAF Phase II challenge process; and the Application is substantively defective in that it still fails to sufficiently demonstrate that the applicants serve the challenged census blocks. For these reasons, the Commission should deny the Application in its entirety.

¹ This Opposition is filed by, and on behalf of, CenturyLink, Inc. and its regulated wholly-owned subsidiaries.

² *Connect America Fund; Connect America Phase II Challenge Process*, WC Docket Nos. 10-90, 14-93, Order, DA 15-383 (rel. Mar. 30, 2015) (“*Mar. 30, 2015 Order*”), Erratum (rel. Apr. 13, 2015); Application for Review of Co-Mo and United, filed herein (Apr. 29, 2015) (“Application”).

The CAF Phase II challenge process was created to allow service providers an opportunity to update the service status of high-cost census blocks prior to the Commission making offers of statewide support to price cap carriers. The process afforded one opportunity for challenges and respondents to present their evidence regarding the service status of challenged census blocks. From there the Bureau already has finalized the list of eligible census blocks, re-run the cost model, extended the statewide offers of support, and triggered the 120-day period for price cap carriers to respond. The CAF II process is moving full steam ahead to enable much-needed broadband deployment in high-cost areas of this country. Now is not the time to derail this effort by re-opening the challenge process. The CAF II train has left the station and should be allowed to proceed unimpeded to its final destination.

I. THE BUREAU CORRECTLY REJECTED THE CO-MO AND UNITED UNSERVED-TO-SERVED CHALLENGES TO CENSUS BLOCKS IN CENTURYLINK'S SERVICE TERRITORY.

The Bureau, pursuant to delegated authority, created the CAF Phase II challenge process to afford providers an opportunity to challenge the served or unserved status of census blocks as reflected on the National Broadband Map.³ In doing so, the Bureau made it very clear that parties would only have one opportunity to present evidence to either support or refute a challenge and thus parties to the challenges should present all of their evidence when making or responding to a challenge.⁴ The Bureau also made very clear that parties asserting a challenge that they served a census block would need to demonstrate that they met each of the requisite

³ *Connect America Fund*, WC Docket No. 10-90, Report and Order, DA 13-1113, 28 FCC Rcd 7211, 7212-13 ¶¶ 4-5 (rel. May 16, 2013) (*May 16, 2013 Report and Order*).

⁴ *Id.* at 7220 n.45; Public Notice, Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process, *Connect America Fund*, WC Docket No. 10-90, DA 14-864, 29 FCC Rcd 7505 at ¶ 7 (rel. June 20, 2014) (*June 20, 2014 Public Notice*).

criteria for qualifying as an unsubsidized competitor.⁵ The Bureau also emphasized that factual statements alone as evidence might not be sufficient against conflicting factual evidence presented by a respondent to a challenge.⁶

Co-Mo and United each submitted challenges that included asserting that they served certain census blocks that had been identified as unserved in CenturyLink's service territory in Missouri. In asserting its challenge Co-Mo provided a factual statement, a coverage map and a flyer providing information about the company's internet, television and telephone offerings to support its challenge. In response CenturyLink noted that Co-Mo's challenge established that Co-Mo provided voice service through its "phone partner" Big River Telephone but did not establish whether Co-Mo was the entity responsible for dealing with any customer problems and the entity that provides quality of service guarantees to its end-user customers as required by the Bureau if the broadband provider was providing a voice solution obtained from another vendor.⁷ As such Co-Mo's challenge failed to establish that it was providing voice service in a manner that would qualify it as an unsubsidized competitor. Additionally, CenturyLink noted that nowhere in its challenge did Co-Mo state that it had a current customer or former customer in each challenged census block or otherwise provide documents to demonstrate that it satisfied this requirement.⁸ CenturyLink also provided evidence that CenturyLink was the only provider of voice service in over two-thirds of the challenged census blocks.⁹

⁵ *May 16, 2013 Report and Order*, 28 FCC Rcd at 7218-19 ¶ 17.

⁶ *June 20, 2014 Public Notice*, 29 FCC Rcd 7505 at ¶¶ 13-15.

⁷ CenturyLink Response to CAF Phase II Challenges Seeking to Reclassify Unserved Census Blocks as Served, WC Docket No. 14-93 at pp. 29-30, filed Nov. 10, 2014 ("CenturyLink Response").

⁸ CenturyLink Response at p. 30.

⁹ CenturyLink Response, Exhibit 6.

In addressing Co-Mo’s challenge, and CenturyLink’s response, the Bureau rejected Co-Mo’s challenge in its “declaration with evidence” category explaining that “[i]n those cases where the supporting documentation did not show the respondent met all of the service requirements, and the declaration did not specifically address all of the service requirements . . . the census block was marked unserved.”¹⁰ Presumably the Bureau concluded that with respect to Co-Mo’s challenge that either Co-Mo had failed to demonstrate that it qualified as a voice provider, failed to demonstrate that it had a current or former customer in each challenged census block, or both. In its Application for Review, Co-Mo does not argue that its challenge and supporting documents as submitted to the Bureau were – standing alone – sufficient to demonstrate that it served the challenged census blocks.¹¹ The Bureau correctly determined based on the evidence before it that Co-Mo had not provided sufficient evidence to sustain its challenge.

Similarly, the Bureau also correctly determined that United’s challenge was not sufficiently supported based on the evidence presented. In submitting its challenge that it served certain census blocks United submitted only a factual statement and a network map to support its challenge. In responding to United’s challenge CenturyLink noted that United did not provide any pricing information to demonstrate that its broadband and voice services met the requisite price criteria.¹² CenturyLink also argued that United’s vague factual statement and map did not sufficiently demonstrate that United had a current or former customer in each challenged census

¹⁰ *Mar. 30, 2015 Order* at ¶ 43.

¹¹ Instead, as discussed in more detail in the next section, having failed to provide sufficient evidence of service when it was supposed to, Co-Mo now seeks to inappropriately provide such evidence in its Application for Review.

¹² CenturyLink Response at p. 56.

block particularly since CenturyLink had evidence that United was not providing voice service in over half of the census blocks it was claiming to serve.¹³

The Bureau rejected United's unserved-to-served challenge to the census blocks in CenturyLink's service territory on the basis that United did not present enough evidence to support its claim. The Bureau explained that this determination resulted where "the respondent provided no substantive evidence, or the evidence provided was extremely weak and inadequate to overcome the evidence filed by the challenger without even statements sufficient to determine whether the party could or did meet any of the evidentiary requirements."¹⁴

It should come as no surprise that the Bureau reached this conclusion in United's case. In the Application United argues that it was not required to provide specific pricing information regarding its broadband and voice services and that its statement that its prices were reasonably comparable to urban areas should have been sufficient to demonstrate its voice and broadband pricing criteria. Additionally, it now argues that its voice and broadband pricing information is available on its website and demonstrates that its voice and broadband pricing meets the pricing criteria. If that is indeed the case, it seems then that it should not have been difficult for United to provide its website information to the Bureau in the first instance to support its challenge. Further, United seems to under-appreciate the requirement that for a census block to be "served" that the service provider should have a current or former customer in each challenged census block.¹⁵ The simple fact is that United neither explicitly stated nor otherwise demonstrated that it

¹³ CenturyLink Response at pp. 56-57.

¹⁴ *Mar. 30, 2015 Order* at ¶ 48.

¹⁵ Co-Mo and United are correct that they were not required to affirmatively demonstrate that they had a current or former customer in each challenged census block to make a prima facie challenge. But, they were required to have a current or former customer in each challenged census block in order to assert that they "served" each challenged census block. *See*

had a current or former customer in each challenged census block. In fact it actually demonstrated that in many of the challenged census blocks it did not have current customers.¹⁶

Given this underwhelming and contradictory evidence, the Bureau was correct in concluding that United did not present sufficient evidence of meeting the service criteria to sustain its challenge.

II. THE APPLICATION IS PROCEDURALLY DEFECTIVE BECAUSE IT PRESENTS FACTS THAT WERE NOT PRESENTED TO THE BUREAU AND IT DISREGARDS THE ESTABLISHED CAF PHASE II CHALLENGE PROCESS.

Commission rules state that “[n]o application for review will be granted if it relies on questions of fact or law upon which the designated authority has been afforded no opportunity to pass.”¹⁷ As such, an Application for Review is not to be used to provide new facts or raise new legal issues before the full Commission that were not presented to the Bureau. This is especially the case here where the Bureau made it abundantly clear that parties to the challenge process would have one opportunity to present their evidence that census blocks were either served or unserved.

June 20, 2014 Public Notice at ¶¶ 8-11 (setting out the three criteria to be met for a service provider to truthfully certify that a census block is “served” including that the provider must have a current or former customer in the census block, and also noting that while providers are not required to make an independent showing for each of the criteria, a weak showing could lose to conflicting evidence presented in response). One obvious way to support a claim of service would be to provide evidence that the service provider actually had a current or former customer in each challenged census block.

¹⁶ Application at p. 10 (explaining that on its Form 505 it indicated in which census blocks it had deployed fiber but had no customers).

¹⁷ 47 C.F.R. § 1.115(c). This rule derives from the corresponding statutory requirement reflected in 47 U.S.C. § 155(c)(5) which states the following:

In passing upon applications for review, the Commission may grant, in whole or in part, or deny such applications without specifying any reasons therefor. No such application for review shall rely on questions of fact or law upon which the panel of commissioners, individual commissioner, employee board, or individual employee has been afforded no opportunity to pass.

Yet, present new facts is just what Co-Mo and United have done here. Having failed to present sufficient evidence during the challenge process that they served certain census blocks, they are now attempting to again demonstrate that they serve certain census blocks by presenting additional evidence of service that they could have provided previously but chose not to do so. The Commission should dismiss the Application for Review because it is procedurally defective.

The Co-Mo and United Application is procedurally incorrect on two fronts. First, the Communications Act and the Commission's rules proscribe using an Application to present new evidence or raise new arguments that were not first presented to the delegated authority.¹⁸ Second, the Application for Review is an inappropriate attempt to circumvent the process that the Bureau established in permitting challenges in the first instance. In this case, the National Broadband Map did not reflect that Co-Mo and United served certain census blocks. Co-Mo and United then had one opportunity to challenge that status and did so, but did so in an incomplete manner. CenturyLink noted certain deficiencies in the challenges and presented evidence that countered the applicants' assertions of service in the challenged census blocks. The Bureau found that the challenges were insufficiently supported and could not be sustained. Unhappy with that result, the challengers now seek to disregard the established challenge process and ignore well-established procedural requirements to obtain the result that they failed to achieve using the correct process. This is not a situation where some external factor inhibited the

¹⁸ 47 U.S.C. § 155(c)(5); 47 C.F.R. § 1.115(c); *see, e.g. In the Matter of Application for Review of a Decision of the Wireline Competition Bureau By Mescalero Apache School Mescalero, New Mexico*, CC Docket No. 02-6, Order, 20 FCC Rcd 5848, FCC 05-72 (rel. Mar. 14, 2005) (noting the rule and declining to consider an issue raised in the Application for Review that was not raised previously); *In the Matter of Charles T. Crawford, et al.*, File No. A060756, et al., Memorandum Opinion and Order, 17 FCC Rcd 19328, FCC 02-274 (rel. Oct. 4, 2002) (noting the rule, declining to consider new issues that were not raised before the Wireless Telecommunications Bureau, and declining to treat the Application for Review as a petition for reconsideration).

challengers' ability to present sufficient evidence during the challenge process. This situation is wholly created by the challengers' own actions and decisions in submitting their challenges. Having not achieved their expected result, the challengers now presume they can circumvent the procedural rules to obtain that result. The Commission should not condone this blatant disregard of the Commission's established processes.

III. THE APPLICANTS HAVE STILL FAILED TO SUFFICIENTLY DEMONSTRATE THAT THEY MEET THE REQUISITE SERVICE CRITERIA FOR THE CHALLENGED CENSUS BLOCKS.

Finally, even if the Commission were to disregard the CAF Phase II challenge process as well as the statutory construct and its own rules regarding applications for review, Co-Mo and United have still failed to demonstrate that they meet the requisite service criteria for the challenged census blocks. First, the applicants have not sufficiently demonstrated that they are providing the requisite voice service. Both parties now acknowledge that they provide their telephone service through a partner, Big River Telephone.¹⁹ Further, they both recognize that the Bureau had stated that in such a situation the broadband provider would be considered to be providing voice service "so long as the broadband provider is the entity responsible for dealing with any customer problems, and it provides quality of service guarantees to end user customers."²⁰ Both are also well aware that the Bureau denied their respective challenges for insufficient evidence that they provide the requisite services in the challenged census blocks. Yet, still, in their review Application, they provide no documentation to buttress the statement that "they act as the customer face for these voice services, such that they are responsible for

¹⁹ In a curious situation, while Co-Mo acknowledged this voice service relationship in its initial challenge, United did not. It is only via the Application for Review that United now states that it provides voice service via a partnership with Big River Telephone. This seems a critical omission that undermines the reliability of United's original challenge.

²⁰ *May 16, 2013 Report and Order* at ¶ 9, n. 21; Application at p. 5.

dealing with any customer problems and they provide quality of service guarantees to end user customers.”²¹ At this juncture a mere factual statement should not be sufficient to determine that these applicants provide the requisite voice services.

Additionally, the applicants have still failed to demonstrate that they have a current or former voice or broadband customer in each challenged census block. Attached to the Application are two lists setting out the number of customers Co-Mo and United have in each of the challenged census blocks. These lists still fail to demonstrate that Co-Mo and United have a current or former customer in each challenged census block. First, in many places in the Application, the applicants are specific regarding “broadband service” or “voice service.” With respect to the lists attached to the Application, however, it is never clearly stated what “service” is being provided to the customers whose numbers are reflected in the list.²² As such the lists fail to demonstrate that Co-Mo or United have a current or former voice or broadband customer in each challenged census block. Second, the lists actually reflect that many of the census blocks have no current customers and the applicants have said nothing to explain how “0” active subscribers meets the requirement of demonstrating a current or former customer in each challenged census block.

Thus, even the applicants’ procedurally defective efforts to have their challenges sustained are still substantively ineffective and insufficient to do so. As such, even if the

²¹ Application at p. 6. Of course, CenturyLink continues to view that submission of documentation that could have been submitted previously with this Application for Review is untimely and in conflict with established procedure.

²² The single reference to the attached lists within the Application at page 9 and the description of the lists at the beginning of Attachment A only reference “service”, and “active subscribers” and never clearly state that the “service” at issue is “voice” and/or “broadband” service. The Commission should not and should not have to presume facts to evaluate documents that are not even appropriately presented in the first instance for its consideration at this time.

Commission were to consider the substance of the Application, the Commission should still deny it because the applicants have still failed to demonstrate that they meet the requisite service criteria for the challenged census blocks.

IV. CONCLUSION.

For the reasons stated above, the Commission should deny the Application.

Respectfully submitted,

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May 14, 2015

CERTIFICATE OF SERVICE

I, Marjorie Herlth, do hereby certify that I have caused the foregoing **OPPOSITION OF CENTURLINK TO CO-MO COMM, INC. AND UNITED SERVICES, INC. APPLICATION FOR REVIEW** to be served via first-class United States Mail, postage prepaid, upon the following persons:

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