

Before the
Federal Communications Commission
Washington, D.C. 20554

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

MEMORANDUM OPINION AND ORDER

Adopted: October 29, 2015

Released: November 5, 2015

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, pursuant to section 1.115 of the Commission's rules, we grant an application for review filed by Co-Mo Comm, Inc. (Co-Mo) and United Services, Inc. (United). Co-Mo and United seek review of the Wireline Competition Bureau's (Bureau) Connect America Phase II Challenge Process Resolution Order, which denied the challenges filed by Co-Mo and by United contesting the Bureau's preliminary determination that certain census blocks in Missouri should be treated as unserved in the cost model used to determine the Phase II offer of support. We conclude that Co-Mo and United serve these census blocks, and therefore those census blocks should be removed from CenturyLink's Phase II area in Missouri. We direct the Bureau to adjust CenturyLink's Phase II support in Missouri consistent with this decision.

II. BACKGROUND

2. In the USF/ICC Transformation Order, the Commission comprehensively reformed and modernized the universal service and intercarrier compensation systems to maintain voice service and

1 See 47 C.F.R. § 1.115.

2 Application for Review of Co-Mo Comm Inc. and United Services, Inc., WC Docket Nos. 10-90 and 14-93, at 2 (filed Apr. 29, 2015) (Co-Mo/United Application for Review); see also Connect America Fund, High-Cost Universal Service Support, WC Docket Nos. 10-90 and 14-93, Order, 30 FCC Rcd 2718 (Wireline Comp. Bur. 2015) (Phase II Challenge Process Resolution Order). CenturyLink filed an Opposition. Opposition of CenturyLink to Co-Mo Comm, Inc. and United Services, Inc. Application for Review, WC Docket Nos. 10-90 and 14-93 (filed May 14, 2015) (CenturyLink May 2015 Opposition). Co-Mo and United filed a Reply. Reply to Opposition of Co-Mo Comm, Inc. and United Services, Inc., WC Docket Nos. 10-90 and 14-93 (filed May 26, 2015) (Co-Mo/United Reply). National Rural Electric Cooperative Association filed a Statement in Support. Statement in Support of the Application for Review of Co-Mo Comm, Inc. and United Services, Inc. of National Rural Electric Cooperative Association, WC Docket Nos. 10-90 and 14-93 (filed May 27, 2015) (NREC Statement of Support).

3 On August 28, 2015, the Bureau authorized CenturyLink to receive Connect America Phase II model-based support in the states it accepted, including for Missouri, subject to adjustment based on the outcome of this Order. Wireline Competition Bureau Authorizes Additional Price Cap Carriers to Receive Almost \$950 Million in Phase II Connect America Support, WC Docket No. 10-90, Public Notice, DA 15-968 (Wireline Comp. Bur. rel. Aug. 28, 2015).

extend broadband-capable infrastructure to millions of Americans.⁴ As part of that reform, the Commission established Connect America Phase II, which will provide ongoing support to promote the deployment of voice and broadband-capable networks in high-cost areas in price cap territories. The Commission specified that Phase II support would not be provided in areas served by an unsubsidized competitor, and it delegated to the Bureau the responsibility of determining those areas in the cost model to be developed to calculate support amounts.⁵ The Commission also specified that there be a process by which parties could challenge that initial determination of whether or not an area is unserved by an unsubsidized competitor.

3. Implementing the Commission's decision, in 2013, the Bureau set the parameters for how it would determine whether an entity would be considered an unsubsidized competitor in the Connect America Cost Model (CAM), specifying the performance metrics for each public interest obligation adopted by the Commission, and how the Bureau would initially determine whether a census block was served or unserved by an unsubsidized competitor.⁶ In the *Phase II Challenge Process Order*, the Bureau established a process by which parties could challenge the initial designation in the CAM of a census block as served or unserved.⁷ The Bureau also adopted FCC Form 505, which parties were required to use in filing challenges and responses.⁸ In submitting Form 505, parties were required to fill out an accompanying certification, affirming that the statements contained in the challenge or responses are true and accurate to the best of the knowledge of the certifying official.⁹

4. *Service Requirements for Unsubsidized Competitors.* In order to qualify as "served" by an unsubsidized competitor, a census block must have voice service and broadband service with pricing that is reasonably comparable to pricing for similar services in an urban area.¹⁰ Prior to commencing the challenge process, the Bureau issued guidance clarifying what is required for a party to truthfully certify on FCC Form 505 that a given census block is "served." In particular, a census block would be considered "served" if a provider could show three elements: (1) the provider actually offers voice and broadband service in the census block, (2) the provider has physical assets in or adjacent to the census block, and (3) the provider currently has or previously had voice or broadband customers in the census block.¹¹ In addition, the broadband service must have, at a minimum, speeds of 4 Mbps downstream and 1 Mbps upstream, a usage allowance of at least 100 GB, and latency of 100 ms or less.¹²

⁴ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

⁵ *Id.* at 17729, para. 170.

⁶ *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060, 15076-80, paras. 39-47 (Wireline Comp. Bur. 2013) (*Phase II Service Obligations Order*).

⁷ *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211 (Wireline Comp. Bur. 2013) (*Phase II Challenge Process Order*).

⁸ *Id.* at 7217, para. 14.

⁹ *Id.*

¹⁰ *Phase II Service Obligations Order*, 28 FCC Rcd at 15061-65. See also *Connect America Fund*, WC Docket No. 10-90, Report and Order, 29 FCC Rcd 13485 (Wireline Comp. Bur. 2014) (*Reasonable Comparability Benchmarks Order*).

¹¹ *Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 7505, 7507-08 (Wireline Comp. Bur. 2014) (*Challenge Process Guidance Public Notice*); see also FCC, *A Basic Guide to the Challenge Process* at 9 (July 31, 2014) (*Challenge Process Basic Guide*), available at <http://www.fcc.gov/encyclopedia/connect-america-phase-ii-challenge-process> (last visited Nov. 5, 2015).

¹² *Phase II Service Obligations Order*, 28 FCC Rcd at 15076-80, paras. 39-47. In April 2014, the Commission directed the Bureau to commence the Phase II challenge process using the standards then in place, including the 4

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5. *Challenge Process Standard for Review.* The Bureau adopted a preponderance of the evidence standard for the Phase II challenge process: whether it is more likely than not, based on all the evidence in the record, that the status of a census block should be changed from its initial designation.¹³

6. The Bureau required parties submitting challenges to include specific evidence as an attachment to the challenge in support of their claims.¹⁴ For each challenged block, parties were required to provide evidence specifying the reason for the challenge.¹⁵ For a potential unsubsidized competitor contending that it does serve an area, the Bureau considered an officer certification to be sufficient evidence that a provider serves a particular census block; however, it noted that such evidence would be more persuasive “if supported by other evidence.”¹⁶

7. As outlined in the *Phase II Challenge Process Order*, respondents to a challenge were required to provide, for each challenged census block, concrete and verifiable evidence supporting their claim that the challenge should not be granted.¹⁷ Respondents attempting to show that a block is unserved only had to show that any one of the criteria was not met.¹⁸ Thus, a price cap carrier contending that a particular census block is unserved by an unsubsidized competitor had to show that at least one of the criteria (speed, latency, capacity, price, or voice) is not met.¹⁹

8. *Phase II Challenge Process Procedural History.* On June 30, 2014, the Bureau commenced the Phase II challenge process, announcing that nearly 745,000 census blocks would be eligible for the offer of Phase II model-based support, subject to the outcome of the challenge process.²⁰ Parties then had an opportunity to present evidence by August 14, 2014, challenging the Bureau’s initial determination of eligible census blocks.²¹

9. Co-Mo challenged the preliminary determination that 785 census blocks were unserved.²² Along with its Form 505, Co-Mo supplemented its challenge with an Officer Affidavit certifying that it

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Mbps downstream and 1 Mbps upstream speed standard. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7083, para. 90 (2014) (*April 2014 Connect America Order and FNPRM*).

¹³ *Phase II Challenge Process Order*, 29 FCC Rcd at 7215, para. 21 n.48; see also *Challenge Process Basic Guide* at 8-9.

¹⁴ *Phase II Challenge Process Order*, 29 FCC Rcd at 7217, para. 15.

¹⁵ *Id.*

¹⁶ *Id.* at 7219, para. 17.

¹⁷ *Id.* at 7214-15, paras. 8-9.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Wireline Competition Bureau Commences Connect America Phase II Challenge Process*, WC Docket Nos. 14-93 and 10-90, Public Notice, 29 FCC Rcd 7986 (Wireline Comp. Bur. 2014) (*Phase II Challenge Process Commencement Public Notice*).

²¹ *Phase II Challenge Process Resolution Order*, 30 FCC Rcd at 2720, para. 6. There were two types of challenges: the first was when a provider (typically a price cap carrier) challenged the designation of a particular census block as served and argued it should instead be treated as unserved in the cost model for purposes of the offer of model-based support. The second was when a provider (typically a cable operator or fixed wireless provider) challenged the designation of a particular block on the map as unserved and argued it should instead be treated as served in the model for purposes of the offer of support – because they serve it. *Id.*

²² See Challenge by Co-Mo Comm Inc., WC Docket 14-93 (filed Aug. 14, 2014) (Co-Mo Challenge).

provides broadband and voice service at reasonably comparable prices to services in urban areas in 785 census blocks, as well as a coverage map, and a flyer of its current offerings.²³

10. United challenged the preliminary determination that 1053 census blocks were unserved.²⁴ Supplementing its Form 505, United provided an Officer Statement certifying that it provides service to 581 of the challenged census blocks at reasonably comparable prices to services in urban areas, and that it did not have any customers but could provide service to another 472 census blocks, as well as a coverage map.²⁵ With respect to the latter group of 472 census blocks, it did not seek a waiver of the Bureau's evidentiary requirement that it currently or previously have voice or broadband customers in the census block in order to certify truthfully that it served those blocks.

11. On September 26, 2014, after determining which challenges presented sufficient evidence to establish a *prima facie* case that the status of the census block should be changed, the Bureau announced the results of its initial review and identified 95,093 census blocks for which the challengers presented a *prima facie* case.²⁶ It concluded that Co-Mo had made a *prima facie* challenge for the 785 census blocks, including the 551 census blocks at issue here where CenturyLink is the incumbent provider. It concluded that United had made a *prima facie* challenge with respect to 581 census blocks (135 census blocks where Windstream is the incumbent provider, and 446 census blocks where CenturyLink is the incumbent provider), but it had not made a *prima facie* case with respect to the 472 census blocks in CenturyLink's territory for which it acknowledged in its challenge that it had no current or former customers.²⁷

12. The Bureau then solicited replies to these *prima facie* challenges by November 10, 2014.²⁸ During the challenge reply period, 80 entities filed replies regarding 30,689 census blocks.²⁹ On November 10, 2014, CenturyLink submitted a response contesting Co-Mo's and United's challenges of census blocks for which CenturyLink would otherwise be eligible for Phase II support.³⁰ In its opposition, CenturyLink claimed that Co-Mo failed to provide "proof that Co-Mo Connect is a provider of voice service" and "proof of a current or former customer in each challenged census block."³¹ Additionally, CenturyLink claimed that United failed to provide "proof of meeting the pricing requirement" and "proof of a current or former customer in each challenged census block."³²

13. On March 30, 2015, the Bureau released an order concluding the Connect America Phase II Challenge and providing its final determination regarding all challenged census blocks.³³ The Bureau stated that it considered all the evidence filed in both the challenge and the reply, and that it placed significant weight on evidence that network facilities are in place and service is advertised throughout an

²³ See Co-Mo Challenge, Affidavit of Randy Klindt.

²⁴ Challenge by United Services, Inc., WC Docket 14-93 (filed Aug. 14, 2014) (United Challenge).

²⁵ See United Challenge, Statement of Darren Farnan.

²⁶ *Replies Sought in Connect America Phase II Challenge Process*, WC Docket Nos. 10-90 and 14-93, Public Notice, 29 FCC Rcd 11497, 11497-501 (Wireline Comp. Bur. 2014) (*Prima Facie Public Notice*).

²⁷ *Id.* at 11499-500.

²⁸ See *id.* at 11501-02.

²⁹ *Phase II Challenge Process Resolution Order*, 30 FCC Rcd at 2722, paras. 11-12.

³⁰ *Opposition of CenturyLink to Further Petitions for Limited Waiver of CAF Phase II Evidentiary Requirement*, WC Docket No. 14-93 (filed Nov. 20, 2014) (CenturyLink Nov. 2014 Opposition).

³¹ *Id.* at 29-30.

³² *Id.* at 56.

³³ *Phase II Challenge Process Resolution Order*, 30 FCC Rcd at 2723, para. 15.

area.³⁴ It also recognized that a competitor's assertions regarding its own offerings and the existence of voice or broadband customers, made in the context of a Commission proceeding where there are consequences for misrepresentations, should be given more weight than assertions based on third-party data regarding the existence of competitors.³⁵

14. The Bureau denied challenges by Co-Mo and United with respect to the blocks at issue in this Application for Review.³⁶ For administrative efficiency – given that it was resolving contested challenges for over 30,000 census blocks – the Bureau disposed of all of the challenges by grouping them into one of several categories. It classified Co-Mo as a case where the relevant evidence was a “declaration with evidence.” The Bureau’s ultimate decision that the blocks were unserved appears to be based on a conclusion that Co-Mo’s supporting documentation did not show it had met all of the service requirements.³⁷ The Bureau designated United as a case involving “insufficient evidence.” This classification suggests that the Bureau concluded, based on its review of both the challenge and the reply that United had not produced enough evidence to demonstrate it served the challenged census blocks.³⁸

15. *Co-Mo/United Application for Review.* On April 29, 2015, Co-Mo and United filed an application for review of the *Phase II Challenge Process Resolution Order*, arguing that the Bureau erred in denying their challenges.³⁹ Co-Mo asserted that the Bureau incorrectly denied its challenge of the 551 census blocks within CenturyLink’s territory because it does provide voice services meeting the Commission’s requirements and that it supplied sufficient evidence that it has current or former customers in the challenged census blocks.⁴⁰ United claimed that it certified that its pricing is reasonably comparable to the prices of voice and broadband services in urban areas, meeting the Commission’s evidentiary requirement, and that it supplied sufficient evidence that the Commission should reject CenturyLink’s argument that it has not proved that it has current or former customers in the challenged census blocks.⁴¹

III. DISCUSSION

16. Upon review, we find the Bureau erred in denying Co-Mo’s and United’s challenges. We find the record shows the Bureau made “an erroneous finding as to an important or material question of fact.”⁴² The Commission concludes that Co-Mo and United sufficiently demonstrated that they meet the service criteria to sustain their challenges that they serve the challenged census blocks in Missouri with voice and broadband services. This decision furthers the Commission’s objective of having funds not flow to an area where there is already an unsubsidized competitor.⁴³

17. First, we find, based on the evidence that was before the Bureau when it resolved the challenge, that Co-Mo does provide voice and broadband services in the 551 challenged census blocks. Co-Mo provided an Officer Affidavit that it provides voice service to these 551 census blocks. The

³⁴ *Id.* at 2730, para. 38.

³⁵ *Id.*

³⁶ For 135 of the 581 census blocks that United successfully presented a prima facie case that the blocks were served, United prevailed. *See id.* at Appendix A.

³⁷ *Id.* at 2732, para. 43.

³⁸ *Id.* at 2733, para. 48.

³⁹ Co-Mo/United Application for Review at i.

⁴⁰ *Id.* at 7-11.

⁴¹ *Id.* at 8-11.

⁴² *See* 47 C.F.R. § 1.115(b)(2)(iv); *see also* Co-Mo/United Application for Review at 1 (arguing “the Bureau erred as a matter of fact in denying the challenges by Co-Mo and United that the census blocks are served”).

⁴³ *Phase II Challenge Process Order*, 28 FCC Rcd at 7217, para. 13.

Bureau had made clear before the commencement of the challenge process that a broadband provider that provides voice using a managed voice solution obtained from a third party vendor 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.⁴⁴ In addition to the Officer Affidavit submitted with its challenge, Co-Mo provided a flyer advertising voice service offerings, which should be seen as strong evidence that the challenged census blocks are served.⁴⁵ Given that Co-Mo showed in its challenge that it has active fiber to the home plant,⁴⁶ we find it to be a facilities-based provider within the Commission's broadband and voice requirements.⁴⁷

18. We are not persuaded by CenturyLink's argument that Co-Mo has not proved it provides voice services.⁴⁸ CenturyLink claimed in its reply to Co-Mo's challenge that Co-Mo was simply "reselling an over-the-top VoIP service provided by Big River Telephone."⁴⁹ To the contrary, based on the record before the Bureau, we conclude that Co-Mo was providing voice service in a manner no different than other facilities-based competitors that rely upon a managed VoIP solution to provision phone service. We reject CenturyLink's argument that "a mere factual statement should not be sufficient to determine that these applicants provide the requisite voice services."⁵⁰ The Bureau previously had determined that a factual statement by a person of knowledge is sufficient to fulfill the requirement that challenges be supported by evidence.⁵¹ We see no reason now to overturn that aspect of the Bureau's analytical framework for the Phase II challenge process. As noted by the Bureau, parties face criminal penalties for knowingly and willingly making materially false, fictitious, or fraudulent statements or representations on official matters before the Commission.⁵² Co-Mo's affidavit therefore was "substantive evidence rather than a mere assertion."⁵³ The Bureau also determined that in opposing a challenge, a party must provide, for each challenged census block, concrete and verifiable evidence supporting their claim that the challenge should be denied.⁵⁴ As CenturyLink did not provide such evidence in response to Co-Mo's prima facie case, the Commission concludes that the Bureau erred in denying Co-Mo's challenge.

19. Second, we do not agree with CenturyLink's argument that United did not meet the pricing requirements. CenturyLink argues that "United did not provide any pricing information" to

⁴⁴ *Id.* at 7215, para. 9 n.21. Although we do not rely on additional evidence included in its Application for Review, we note that Co-Mo clarified it handles all customer service. See Co-Mo/United Application for Review at 9.

⁴⁵ See Co-Mo Challenge; *Challenge Process Guidance Public Notice*, 29 FCC Rcd at 7509, para. 12 n.25.

⁴⁶ Co-Mo Challenge, Affidavit of Randy Klindt.

⁴⁷ Both Co-Mo and United provided statements and maps showing they have voice and broadband-capable physical assets in the challenged census blocks. See Co-Mo Challenge; United Challenge.

⁴⁸ See CenturyLink Nov. 2014 Opposition at 29-30; see generally CenturyLink May 2015 Opposition. See also *Letter from Jeffrey S. Lanning, Vice President – Federal Regulatory Affairs, CenturyLink to Marlene H. Dortch, Secretary, Federal Communications Commission, Notice of Ex Parte, WC Docket No. 10-90* (filed Oct. 1, 2015) (CenturyLink Ex Parte Letter).

⁴⁹ CenturyLink Nov. 2014 Opposition at 30.

⁵⁰ CenturyLink May 2015 Opposition at 9.

⁵¹ *Challenge Process Guidance Public Notice*, 29 FCC Rcd at 7509, para. 13.

⁵² 18 U.S.C. § 1001. See also *Connect America Fund*, WC Docket No. 10-90, Order, 29 FCC Rcd 181, 185, para. 12 (Wireline Comp. Bur. 2014) (*Phase I Challenge Order*) (a certification alone is enough to support a determination that it is more likely than not that a census block is served).

⁵³ *Challenge Process Guidance Public Notice*, 29 FCC Rcd at 7509, para. 13.

⁵⁴ *Phase II Challenge Process Order*, 28 FCC Rcd at 7218-19, para. 17.

support its factual statement that its prices met the requirements.⁵⁵ However, the Bureau did not require an unsubsidized competitor to specifically list its prices; it merely required the competitor to certify that its prices are reasonably comparable to services in urban areas.⁵⁶ Furthermore, the Bureau had previously established that in opposing a challenge, a price cap carrier “would need to demonstrate that the provider’s advertising non-promotional price for the lowest cost broadband [and voice] service offering is above” the benchmark prices.⁵⁷ As United certified that it offers reasonably comparable prices to urban areas in its challenge,⁵⁸ and CenturyLink failed to demonstrate that United’s advertised, non-promotional prices are above the benchmark price, we find that United’s challenge should have been granted.

20. Third, we are not persuaded by CenturyLink’s argument that neither Co-Mo nor United provided proof that it has current or former customers in each challenged census block. Prior to the commencement of the challenge process, the Bureau made clear that a statement from a person with knowledge of the facts is sufficient to fulfill the requirement that challenges be supported by evidence.⁵⁹ Therefore, the statements provided by Co-Mo and United in their challenges, certifying that they provide broadband and voice services to customers in each challenged census block, sufficiently met the Bureau’s evidentiary requirements. CenturyLink does not refute this evidence with concrete and verifiable evidence supporting their claims that Co-Mo’s and United’s challenges should not be granted, thus failing to meet the respondents’ evidentiary burden in contesting a challenge.⁶⁰

21. In its reply to Co-Mo’s challenge, CenturyLink argued that Co-Mo only showed where they had service “available” in the census blocks, rather than any documents that show that either entity had current or former customers in the census blocks.⁶¹ This ignores the fact that Co-Mo provided an Officer Affidavit that it provided voice and broadband to each of the 785 census blocks when it originally submitted the challenge.⁶² Based on the record before the Bureau when it acted on the challenges, we find that Co-Mo provided sufficient proof that it has current or former customers in each challenged census block in the form of the officer certification.

22. We similarly are not persuaded by CenturyLink that United did not demonstrate that it had a current or former customer in each challenged census block. CenturyLink argued that United’s supplementary statement certifying service and United’s coverage map, which color coded the relevant census blocks as having active customers or having fiber available but no customers, was insufficient to demonstrate that United has current or former customers in the challenged census blocks.⁶³ The Bureau had already concluded that United had failed to make a prima facie case for 472 census blocks where it

⁵⁵ CenturyLink Nov. 2014 Opposition at 56.

⁵⁶ *Phase II Service Obligations Order*, 28 FCC Rcd at 15078-80, paras. 39-47.

⁵⁷ *Id.* at 15079-80, para. 46.

⁵⁸ United Challenge, Statement of Darren Farnan (stating that “our prices are reasonably comparable to services in urban areas”). Further, while not part of the record for the challenge process, we note that the pricing available on the United website supports the certification of reasonably comparable prices. See Co-Mo/United Application for Review at 6, n.12 (stating that the voice package is priced at \$38.95 a month, below the benchmark \$46.96, and the broadband service is priced at \$49.95, below the benchmark of \$60, which is readily available on its website).

⁵⁹ *Challenge Process Guidance Public Notice*, 29 FCC Rcd at 7509, para. 13.

⁶⁰ *Phase II Challenge Process Order*, 28 FCC Rcd at 7218-19, para. 17 (stating that to oppose a challenge, parties “must provide, for each challenged census block they wish to contest, concrete and verifiable evidence supporting their claims that the challenge should not be granted”).

⁶¹ CenturyLink Nov. 2014 Opposition at 30.

⁶² Parties face criminal penalties for knowingly and willingly making materially false, fictitious, or fraudulent statements or representations on official matters before the Commission. 18 U.S.C. § 1001.

⁶³ *Id.* at 57.

did not have customers.⁶⁴ Notwithstanding some apparent confusion on the part of United, those blocks are not before us today.⁶⁵ United's challenge otherwise included a certification that it did have customers in the 446 census blocks at issue here, as well as a map of where it had deployed facilities.

23. Finally, we reject CenturyLink's argument that granting Co-Mo's and United's Application for Review would be procedurally defective, pursuant to section 1.115 of the Commission's rules.⁶⁶ Our decision today is based only on the evidence before the Bureau. Upon our review of the same record, we overrule the Bureau, as it relates to the 551 census blocks in CenturyLink's incumbent territory served by Co-Mo and the 446 census blocks in CenturyLink's incumbent territory served by United, because the respondent CenturyLink failed to provide sufficient evidence in its reply to the challenges. We find that the Bureau erred, and the information provided by the challengers and the respondent during the Phase II Challenge Process was sufficient to demonstrate that it was more likely than not that the challenged census blocks are "served." We do not rely on any new information included in the Application for Review, although we observe that it does support our findings.

24. Under the terms of the challenge process established by the Bureau, a statement certifying that a provider is offering services meeting all of the Commission's requirements in a challenged census block, that physical plant exists in that census block, and that the provider has customers receiving services is persuasive evidence for a challenge.⁶⁷ Here, we find that where Co-Mo and United's challenges provided statements certifying that service that met the Commission's requirements was available in the challenged census blocks, and they currently have customers receiving service in the challenged census blocks, along with maps showing where they have deployed fiber to the home plant, and where CenturyLink failed to provide any persuasive evidence to undermine this showing, the challenges should have been granted. For the foregoing reasons, we grant Co-Mo and United's Application for Review and the 551 census blocks in CenturyLink's incumbent territory served by Co-Mo and the 446 census blocks in CenturyLink's incumbent territory served by United will be treated as served and removed from CenturyLink's Phase II area in Missouri. We direct the Bureau to adjust CenturyLink's Phase II support in Missouri consistent with this decision.⁶⁸

IV. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 214, 254, and 303(r) of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 214, 254, 303(r), 1302, and section 1.115 of the Commission's rules, 47 C.F.R. § 1.115, that this Memorandum Opinion and Order is ADOPTED.

⁶⁴ See *Prima Facie Public Notice*, 29 FCC Rcd at 11497-501.

⁶⁵ United erroneously refers to the census blocks at issue as 472, which is the number of challenged census blocks denied by the Bureau in the *Prima Facie Public Notice*. Co-Mo/United Application for Review at 2. We find the census blocks currently at issue to be the 446 census blocks deemed unserved in the *Phase II Challenge Process Resolution Order*. See Co-Mo/United Application for Review at 1 (seeking review of the challenges denied in the *Phase II Challenge Process Resolution Order*). United cannot challenge the Bureau's determination that it failed to make a prima facie case for the 472 census blocks, as that would be an untimely Application for Review of a decision made in September 2014. Therefore, those blocks remain classified as unserved.

⁶⁶ See 47 C.F.R. § 1.115; see also CenturyLink's May 2015 Opposition at 6.

⁶⁷ *Challenge Process Guidance Public Notice*, 29 FCC Rcd at 7510, para. 15 n.33.

⁶⁸ In its *Ex Parte*, CenturyLink requests that the Commission only remove the census blocks from the list of eligible locations but not reduce its Phase II funding for Missouri. See CenturyLink *Ex Parte* Letter. The proper procedural vehicle for this request is a petition for waiver of the rule that model-based support be calculated only for eligible census blocks that are not served by an unsubsidized competitor. Such a request would need to establish special circumstances and show that waiver of the rule is in the public interest. We find no evidence in the record to substantiate such a waiver.

26. IT IS FURTHER ORDERED that, pursuant to the authority of section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c)(5), and section 1.115(g) of the Commission's rules, 47 C.F.R. § 1.115(g), the Application for Review filed by Co-Mo Comm, Inc. and United Services, Inc. on April 29, 2015, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary