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Subject:	06/10/15 CenturyLink Response to Broadband Opportunity Council Notice and Request for Comment -- Docket No. 1540414365-5365-01
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Via BOCrfc2015@ntia.doc.gov

National Telecommunications and Information Administration
U.S. Department of Commerce
Attn: Broadband Opportunity Council

On behalf of CenturyLink, Inc., attached is CenturyLink's Response to the Broadband Opportunity Council's Request for Comment, Docket No. 1540414365-5365-01, 80 Fed. Reg. 23785 (Apr. 29, 2015).

Questions regarding this Response can be directed to Mr. Craig Brown via 303-992-2503 or Craig.J.Brown@CenturyLink.com, or to Ms. Tiffany Smink via 303-992-2506 or Tiffany.Smink@CenturyLink.com.

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Before the
DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration

In the Matter of	)	
	)	
Broadband Opportunity Council	)	Docket No. 1540414365-5365-01

CENTURYLINK'S RESPONSE TO THE BROADBAND OPPORTUNITY COUNCIL'S REQUEST FOR COMMENT

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June 10, 2015

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CENTURYLINK'S RESPONSE TO THE BROADBAND OPPORTUNITY COUNCIL'S REQUEST FOR COMMENT

CenturyLink commends the Administration for undertaking this important initiative to expand broadband deployment and adoption. As recognized in the Presidential Memorandum,[1] access to high-speed broadband is critical to this nation's growth and competitiveness. For its part, CenturyLink has invested billions of dollars in recent years to expand broadband to previously unserved areas and accelerate broadband speeds in areas that already have broadband. CenturyLink's ability to continue to invest in broadband deployment at a similar pace depends, in part, on federal government policies and regulations. CenturyLink outlines below a number of ways in which Executive Branch agencies can optimize their policies and regulations to facilitate this essential private investment in America's future.

CenturyLink is a leading provider of broadband, video and voice services, as well as various cloud, information technology, and other high-tech services, with an incumbent local exchange carrier (ILEC) service territory spanning 37 states. While CenturyLink serves major metropolitan areas such as Phoenix, Seattle, Denver and Las Vegas, much of its service territory includes wide-open spaces with more livestock than people. Such areas are notoriously

[1] Presidential Memorandum -- *Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training: Memorandum for the Heads of Executive Departments and Agencies* (Mar. 23, 2015), *available at* https://www.whitehouse.gov/the-press-office/2015/03/23/presidential-memorandum-expanding-broadband-deployment-and-adoption-addr (*Presidential Memorandum*).

expensive to serve with broadband, as the substantial cost of fiber deployment and other necessary network upgrades can be spread over only a small customer base. The high-cost support provided through the Federal Communications Commission's Connect America Fund (CAF) will enable broadband investment in some areas where otherwise such investment would not be economically feasible. But, even with CAF funding, broadband investment in some areas may not be financially prudent, and such funding is not available in many rural areas that CenturyLink serves. Any steps the federal government can take to reduce costs, eliminate delays and otherwise improve the business case associated with broadband deployment will hasten the availability of both wireline and wireless high-speed broadband to more Americans.

Given its size and scope, the federal government plays an important role in facilitating broadband deployment and adoption. It can influence deployment and adoption in ways as direct as providing grants for deployment and also in a variety of indirect ways, such as streamlining access to rights-of-way, providing favorable tax treatment and ensuring that federal regulations do not unfairly favor certain categories of broadband providers. By taking the right steps, particularly through coordinated action, Executive Branch agencies thus can spur private investment in broadband facilities and make broadband services available to more Americans. Conversely, misguided government policies will hinder this critical investment. Without the type of coordination envisioned in the *Presidential Memorandum*, it is also likely that agency policies will work at cross purposes, thereby undermining policies and programs that would otherwise further broadband deployment and adoption.

For all these reasons, the government should adopt a coherent national set of policies, applicable across all Broadband Opportunity Council (Council) member agencies. As a starting

point, the Council should memorialize such forward-looking policies based on the following principles:[2]

- Avoiding policies or decisions that fund or enable overbuilding of existing fixed broadband services;
- Streamlining permitting and other processes related to accessing federal lands for broadband deployment;
- Improving federal taxation policies to encourage broadband deployment;
- Creating common-sense policies for defining and measuring broadband services;
- Considering programs to promote broadband adoption;
- Ensuring that sufficient resources are devoted to the Department of Homeland Security's Enhanced Cybersecurity Service; and
- Adopting regulation that applies equally to all competing providers of broadband services.

I. EXECUTIVE BRANCH AGENCIES SHOULD AVOID POLICIES OR DECISIONS THAT FUND OR ENABLE OVERBUILDING OF EXISTING FIXED BROADBAND SERVICES.

To ensure that federal support is used effectively and efficiently in supporting broadband deployment, Executive Branch agencies should coordinate so as not to fund multiple deployment projects for the same purposes in the same areas. This is especially the case in areas where it is economically challenging to deploy broadband. In areas where not even one provider is currently offering broadband service, Executive Branch agencies should not fund multiple deployment efforts.

Instead, with respect to broadband deployment, Executive Branch agencies should initially target support to areas that are currently without broadband service, and focus support in these areas so as to encourage broadband deployment in a fiscally responsible manner. In areas

[2] While FCC policies may generally fall outside the scope of the Request for Comment, certain FCC policies provide an instructive model of how particular types of government actions will tend to facilitate or hinder private investment in broadband networks. CenturyLink therefore notes such policies where relevant.

where broadband is not currently deployed, it is most likely due to the fact that the economics of broadband deployment in that area is not favorable as a going-forward business concern for even a single provider. In turn, it is simply an ineffective use of federal funds to support more than one broadband provider in such an area.

Federal policies and funding for broadband deployment must support broadband for all Americans. Executive Branch agencies should not support projects that will result in creating or increasing a divide between those who have broadband and those who do not. Federal policies should focus first on providing a basic level of broadband service to all.

Additionally, Executive Branch agencies should encourage efficient use of federal funds for broadband deployment by encouraging private and public entities to work together to accomplish broadband deployment in local communities. Executive Branch agencies should exercise caution in providing funding to local communities that will result in overbuilding existing broadband facilities. Instead, federal funding should either encourage cooperative efforts for efficient broadband deployment or should simply be used where there are no broadband facilities at all.

II. THE GOVERNMENT SHOULD STREAMLINE PERMITTING AND OTHER PROCESSES RELATED TO ACCESSING FEDERAL LANDS FOR BROADBAND DEPLOYMENT.

In deploying broadband in its service areas, CenturyLink frequently needs access to federal lands. To deploy broadband to a more rural community often the most efficient route for deploying fiber will include traversing federal lands to some degree. But, one of the most significant delays in deploying broadband when it involves federal land access is the extremely slow permitting process for such access. In CenturyLink's experience it typically takes about a year and a half to obtain the requisite approvals for access to federal lands for broadband

deployment. Worse, it takes this long even in the typical situation where CenturyLink is seeking to re-gain access to federal lands where it already has conduit or aerial wires. And, CenturyLink is not aware of a situation where its request for a permit for federal land access was denied; it simply takes an inordinately long time to obtain a permit.

In fact, the process takes so long that in some circumstances CenturyLink has opted to forgo transiting federal lands, and instead utilize a longer, more expensive route around federal lands to move forward with the planned broadband deployment in a more time-effective manner. Unfortunately, that has also resulted in reducing the scope of planned deployments. To stay within a set budget, where more resources are expended to reach the community, less resources are available to reach locations within the community. More distant locations may be dropped from the planned deployment to keep the project within budget. In sum, the extended permitting process for access to federal lands undermines the timely and cost-effective deployment of broadband services.

Federal departments and agencies should improve their permitting processes for access to federal lands in order to promote broadband deployment. In fact, some steps have been taken by federal entities to eliminate unnecessary steps in their permit processes to speed broadband deployment. For instance, the Department of Transportation has determined that projects within an existing operational right-of-way do not require an environmental assessment or an environmental impact statement to be prepared and thus adopted a categorical exclusion under the National Environmental Policy Act (NEPA) for such projects.[3] This rule change allows broadband deployment projects to avoid time-consuming and unnecessary NEPA reviews for installations in previously-disturbed roadway right-of-ways.

[3] Federal Highway Administration, Department of Transportation, 23 C.F.R. § 771.117 (Jan. 13, 2014).

Other Executive Branch agencies should take similar steps to review and modify their permitting processes to promote faster broadband deployment that requires access to federal lands. Land management agencies like the United States Forest Service and the National Parks Service should review their permitting processes and implement a similar categorical exclusion under NEPA for broadband deployment projects that only involve installations in previously-disturbed right-of-ways on federal lands that those agencies administer. Executive Branch agencies should make permits for broadband deployment a priority, and undertake review of their permit processes to determine how to take effective steps to implement that priority.

III. THE TREASURY DEPARTMENT SHOULD IMPROVE FEDERAL TAXATION POLICIES FOR GOVERNMENT FUNDING THAT SUPPORTS BROADBAND DEPLOYMENT.

The Treasury Department can aid broadband deployment in this country by providing guidance to other Executive Branch agencies regarding tax treatment for federal grant funding to enable corporate expenditures on broadband deployment. In the context of the Broadband Technology Opportunities Program (BTOP) the Treasury Department has already recognized that under certain circumstances government grants to support broadband infrastructure deployment can qualify as non-shareholder contributions to capital of a corporation that would be excluded from the corporation's gross income under Section 118 of the Internal Revenue Code.[4] The Treasury Department should work with other Executive Branch agencies to develop a set of guidelines that will help to design programs that support broadband deployment in a manner that encourages participation through favorable tax-treatment. In creating programs to support broadband deployment, agencies should be clear up front regarding tax treatment for

[4] William J. Wilkins, Chief Counsel, U.S. Treasury letter to Cameron F. Kerry, General Counsel, U.S. Department of Commerce, dated Mar. 4, 2010.

government funding. This will enable those interested in participating in such programs to better evaluate the financial impacts of their potential participation.

Government funding that is used to deploy broadband networks that can qualify as direct contributions to the capital of the recipient would enable recipients of those grants to put more of that funding into broadband deployment immediately. This stretches the impact of that funding and enhances the ability of that funding to accomplish the objective of making broadband service available to all Americans. By providing guidance to other Executive Branch agencies and the industry as to when government funding for broadband deployment can qualify as contributions to capital and when government funding must otherwise be treated as taxable income will help those Executive Branch agencies and potential grant recipients to more effectively evaluate the use of that funding to accomplish broadband deployment objectives.

The Treasury Department should also permit Executive Branch agencies to bifurcate support such that for a given grant, a portion could be considered a Section 118-qualifying contribution to capital, while another portion would be considered taxable income. This would enable Executive Branch agencies to award grants that are better designed to address the reality of deploying broadband in areas where it is not otherwise economic to build and maintain broadband networks, while encouraging that broadband investment through a more appealing tax structure.

IV. THE GOVERNMENT SHOULD CREATE COMMON-SENSE POLICIES FOR DEFINING AND MEASURING BROADBAND SPEEDS.

The Council seeks comment on how Executive Branch agencies should define and measure broadband. In both cases, the agencies should adopt common-sense policies that take account of ongoing National Telecommunications and Information Administration (NTIA) and FCC activities in these areas.

A. Defining Broadband.

"Broadband" is inherently a broad term. As typically defined, it is intended to encompass any circuit that is significantly faster than a dial-up phone line for providing Internet access.[5] Today, there is such a range of broadband speeds and variety of broadband Internet access service offerings that a single all-encompassing definition is unwieldy and a single narrow definition is ineffective for accomplishing the varied objectives for broadband deployment and adoption across the country. At some level a particular minimum level of broadband service should be considered the broadband staple that ought to be available to all Americans throughout the country. Of course, even such a minimum level of broadband service may change over time as evidenced by the FCC's shift in the broadband speed supported by CAF from 4/1 Mbps to 10/1 Mbps.[6] Nevertheless, there should be a level of coordination and agreement across Executive Branch agencies as to the "broadband" service that is being supported for similar grant purposes. For instance, if the purpose of a grant is to support broadband deployment in previously unserved areas, the same level of broadband service ought to be supported across the agencies for this type of grant. Similarly, if a grant is intended to support broadband to anchor institutions, the same level of broadband service ought to be supported across agencies for this

[5] *See, e.g.*, "Today's common definition of broadband is any circuit significantly faster than a dial-up phone line. That tends to be a cable modem circuit from [a] local cable TV provider, a DSL circuit, a T-1 or an E-1 circuit from [a] local phone company[,]" Newton's Telecom Dictionary (22nd ed. 2006); "…The term broadband commonly refers to high-speed Internet access that is always on and faster than the traditional dial-up access. Broadband includes several high-speed transmission technologies such as: …Digital Subscriber Line (DSL),...Cable Modem,…Fiber,…Wireless,…Satellite,…Broadband over Powerlines (BPL)…", as referenced by the FCC on its website (Types of Broadband Connections, https://www.fcc.gov/encyclopedia/types-broadband-connections (last visited June 9, 2015)).

[6] *In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, 29 FCC Rcd 15644 (rel. Dec. 18, 2014).

type of grant. This approach ought to enable a more uniform distribution of support for expansion and adoption of broadband services.

B. Measuring Broadband.

As the Council is undoubtedly aware, the NTIA and the FCC have extensive work underway related to the measurement and tracking of broadband speeds. Given this ongoing work, Executive Branch agencies need not, and should not, establish additional collection activities in this area, except as necessary to ensure that recipients of broadband grants are fulfilling the conditions of those grants.

In 2009, NTIA initiated a program to create an interactive, online National Broadband Map, as envisioned by Congress.[7] In doing so, NTIA relied on, and sometimes distributed grants to, state governments and non-profits to collect the data used in the map. In 2011, NTIA rolled out the first version of the Map,[8] with numerous subsequent updates.[9] In unveiling the current

[7] *See* NTIA Press Release, *NTIA Unveils Program to Help States Map Internet Infrastructure: Program to Help Create National Broadband Map, Consumers with Service Availability* (Jul. 1, 2009), *available at* http://www.ntia.doc.gov/press-release/2009/ntia-unveils-program-help-states-map-internet-infrastructure.

[8] *See* NTIA Press Release, *NTIA Unveils National Broadband Map and New Broadband Adoption Survey Results* (Feb. 17, 2011), *available at* http://www.ntia.doc.gov/press-releases/2011/commerce%C3%A2%E2%82%AC%E2%84%A2s-ntia-unveils-national-broadband-map-and-new-broadband-adoption-survey.

[9] *See, e.g.*, NTIA Blog, *The National Broadband Map Gets an Update* (Sept. 21, 2011), *available at* http://www.ntia.doc.gov/blog/2011/national-broadband-map-gets-update; NTIA Blog, *New Data for the National Broadband Map* (Mar. 2, 2012), *available at* http://www.ntia.doc.gov/blog/2012/new-data-national-broadband-map; NTIA Blog, *Working to Provide a Better National Broadband Data Map* (Feb. 20, 2014) (rolling out the seventh edition of the National Broadband Map), *available at* http://www.ntia.doc.gov/blog/2014/working-provide-better-national-broadband-map.

version of the National Broadband Map, NTIA noted that states had submitted data every six months for five years.[10]

In addition to its collaboration with NTIA on the National Broadband Map, the FCC has undertaken significant data collections in its Measuring Broadband America (MBA) initiative, which arose out of the 2010 National Broadband Plan. Since 2011, the FCC has published annual reports with broadband performance reports from data gathered from the MBA program.[11] The program compares fixed Internet Service Providers' average delivered download and upload speeds against their advertised speeds and provides additional information on latency and website loading time. The FCC is working to expand the MBA program to include mobile broadband providers as well. According to a recent report by the General Accountability Office (GAO), the FCC is exploring expansions and modifications to the MBA program.[12] In response to recommendations in the GAO report, the FCC has stated its intention to undertake research and develop performance measures to ensure that the MBA program is meeting consumers' needs.[13] In its recent *Open Internet Order*, the FCC also adopted enhanced disclosure requirements for providers of broadband Internet access service, including enhancements related

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[10] *See* NTIA Blog, *National Broadband Map Has Helped Chart Broadband Evolution* (Mar. 23, 2015), *available at* *http://www.ntia.doc.gov/blog/2015/national-broadband-map-has-helped-chart-broadband-evolution*.

[11] *See, e.g.*, FCC Office of Engineering and Technology and Consumer and Governmental Affairs Bureau, *Measuring Broadband America – 2014: A Report on Consumer Wireline Broadband Performance in the U.S.* (2014), *available at* *https://www.fcc.gov/reports/measuring-broadband-america-2014*. *See also Measuring Fixed Broadband: Consumer Wireline Broadband Performance in U.S.* (updated Mar. 17, 2015) (explaining how MBA data are collected), *available at* *https://www.fcc.gov/encyclopedia/measuring-broadband-america-measuring-fixed-broadband*.

[12] U.S. Government Accountability Office, Report to Congressional Requesters, *Broadband Performance: Additional Actions Could Help FCC Evaluate Its Efforts to Inform Consumers*, at 19-20 (April 2015), *available at* *http://www.gao.gov/products/GAO-15-363*.

[13] *Id.* at 35.

to network performance characteristics.[14] Finally, the FCC has established various broadband reporting requirements for recipients of CAF support.[15]

Given these extensive and ongoing data collection efforts it would be duplicative and counterproductive for any of the Executive Branch agencies to create additional reporting or data collection requirements, except when necessary to ensure that broadband funding is being properly utilized.

V. THE COUNCIL SHOULD ALSO CONSIDER PROGRAMS TO PROMOTE BROADBAND ADOPTION.

In addition to broadband deployment, there are other aspects of broadband service that deserve the Council's attention. One is promoting broadband adoption. It has been recognized that merely deploying broadband is not sufficient to accomplish adoption.[16] A broadband connection can be a powerful tool to enhance education, look for work, start a business or connect to a broader community. Even so, there are still many obstacles to broadband adoption,

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[14] *In the Matter of Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, FCC 15-24 ¶¶ 165-68 (rel. Mar. 12, 2015), *appeals pending sub nom*., *United States Telecom Association v. FCC*, Nos. 15-1063, *et al*. (D.C. Cir., *pets. for rev. filed* Mar. 23, 2015, Apr. 13, 2015). The Order includes a voluntary safe harbor for those providers participating in the MBA program. *Id.* ¶¶ 176-81.

[15] *See, e.g.*, *In the Matter of 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, 17853 ¶ 585 (rel. Nov. 18, 2011) (requiring all eligible telecommunications carriers to report the results of network performance tests related to speed and latency) (*USF/ICC Transformation Order)* (subsequent regulatory history omitted), *aff'd sub nom.*, *In re: FCC 11-161*, Nos. 11-9900, *et al*., 753 F.3d 1015 (10th Cir. 2014), *petitions for rehearing en banc denied*, Orders, Aug. 27, 2014, *cert. denied*, 83 U.S.L.W. 3450, May 4, 2015 (Nos. 14-610, *et al*.).

[16] *See, e.g*., *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, FCC 15-10 at ¶ 7 ("…we continue to see that adoption lags behind deployment to a significant degree…[and thus] we will continue to evaluate…how the Commission can address the adoption gap.") (rel. Feb. 4, 2015), Erratum (rel. Feb. 24, 2015).

especially among low-income communities. Some key obstacles to broadband adoption include cost, relevance, security concerns, and digital literacy.

Executive Branch agencies can play an important role in increasing broadband adoption among the communities they serve. For example, the Department of Housing and Urban Development (HUD) is bringing together non-profits, public housing authorities and stakeholders to address the challenge of broadband adoption within the communities it supports. On April 3, HUD announced its Digital Opportunity program, designed to work with about 20 communities around the nation, in a demonstration program aimed at finding innovative new ways to promote broadband adoption.[17] Other Executive Branch agencies should examine how they can take similar innovative steps within their spheres of influence to spur broadband adoption.

VI. THE ADMINISTRATION SHOULD ENSURE THAT SUFFICIENT RESOURCES ARE DEVOTED TO DHS' ENHANCED CYBERSECURITY SERVICE.

As the Council well knows, broadband has become integral to the national (as well as global) economy, as Americans conduct professional and personal business, take classes, look for employment, obtain health information, watch news and entertainment and engage in countless other activities on the Internet, often on a daily basis. While yielding tremendous benefits, this increasing dependence on the web has created tremendous incentives and opportunities for cyber attacks of various kinds. Seemingly every day, headlines bring news of yet another breach of a prominent private or public network. Rising to the challenge of these

[17] *See* U.S. Department of Housing and Urban Development, Advance Notice of Digital Opportunity Demonstration, Docket No. FR-5859-N-01, 80 Fed. Reg. 18248 (Apr. 3, 2015). Somewhat parallel to HUD's program to address broadband adoption, CenturyLink provides broadband service to thousands of HUD-assisted homes, and offers an "Internet Basics" package that enables Lifeline-qualified residents to receive a broadband connection for as low as $9.95 per month.

cyber threats has become critical to the success of the broadband economy. It is also an important component in increasing adoption, particularly for those citizens hesitant to participate in cyberspace due to concerns about the safety and security of their personal and financial information.

Executive Branch agencies, state and local governments, and the private sector have already invested millions of dollars to combat the challenges presented by cybersecurity. The Administration has taken a leading role in this regard, through a series of initiatives, including Executive Order 13636, which resulted in the creation of the groundbreaking Cybersecurity Framework, designed to help critical infrastructure owners and operators manage cybersecurity-related risks.

Another innovative program in the Department of Homeland Security (DHS), the Enhanced Cybersecurity Service (ECS), provides an effective tool to leverage the classified and sensitive cyber threat information that many federal agencies already collect to protect the nation's critical infrastructure.[18] DHS works with cybersecurity organizations from across the federal government to gain access to a broad range of sensitive and classified cyber threat information. DHS then uses this information to develop cyber threat indicators, which it shares with qualified Commercial Service Providers to enable those providers to better protect their customers. CenturyLink is one of three commercial providers that has partnered with DHS to help protect the nation's financial, electric, retail, telecom and other sectors from cyber threats by providing intrusion prevention services that use the classified and sensitive information furnished

[18] *See* U.S. Department of Homeland Security website, *Enhanced Cybersecurity Services*, http://www.dhs.gov/enhanced-cybersecurity-services (last visited June 8, 2015).

by the government to screen traffic before it reaches the networks of critical infrastructure providers.[19]

We encourage Congress and the Administration to devote sufficient resources to this important program. Recruiting top cybersecurity personnel is a challenge throughout the private sector and government for the foreseeable future, but attracting and retaining top cybersecurity leaders will help ensure that this unique asset of the federal government can be used to protect U.S. broadband networks. We also encourage the Administration to make ECS an integral part of its partnerships with state, local, tribal and territorial governments, and its continuing dialogue with the private sector.

VII. FEDERAL REGULATION SHOULD APPLY EQUALLY TO ALL PROVIDERS OF BROADBAND SERVICES.

Given the current state of the broadband marketplace, Executive Branch agencies should eliminate any regulation that imposes duties on particular types of broadband providers, as such regulation inhibits competition and innovation.

A. Today's Broadband Marketplace Bears Little Resemblance to Telecommunications Markets of Ten or Even Five Years Ago.

Sound public policy must be grounded in the realities of today's fragmented and ever-evolving broadband marketplace. The vast majority of Americans have benefited from the availability of robust broadband service and a choice of broadband providers. As of June 2014, more than 85 percent of the nation had access to wireline broadband with a download speed of at

[19] *See* CenturyLink website, *Enhanced Cybersecurity Services (ECS) Provide an Extra Layer of Protection: CenturyLink offers a new tool in the fight against cyber attacks, available at* *http://www.centurylink.com/business/asset/white-paper/enhanced-cybersecurity-services-wp140922.pdf*.

least 25 Mbps, and more than 83 percent could get wireline broadband at 50 Mbps or more.[20] According to the National Broadband Map, 56 percent of the nation had access to three or more wireline Internet providers and a whopping 97 percent had a choice of three or more wireless Internet providers.[21]

This marketplace bears little resemblance to that of the mid-1990s when most of the current regulatory framework for communications was established. For example, when the Telecommunications Act of 1996 was enacted, incumbent phone companies (like CenturyLink) provided telephone service to nearly all households.[22] Today, CenturyLink serves approximately *only 1 in 4 households* in its incumbent service territory,[23] as shown in Figure 1, and ILEC fixed access lines account for less than 17 percent of the total market for wireline and wireless telephone service (including VoIP services).[24]

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[20] National Broadband Map, available at http://www.broadbandmap.gov/summarize/nationwide (last visited May 29, 2015).

[21] *Id.*

[22] *See, e.g., Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Notice of Proposed Rulemaking, 11 FCC Rcd 14171, 14174-75 (1996) (In enacting the 1996 Act, "Congress acknowledged that incumbent LECs have constructed and put in place high quality, reliable, redundant local networks that can provide virtually ubiquitous service, and that they possess an approximate 99.7 percent share of the local market as measured by revenues [footnote omitted]….Moreover,…virtually all existing customers subscribe to the incumbent LEC...."); H.R. Rep. No. 104-204, pt. 1, at 50 (1995) (104th Cong., 1st Sess.) ("…[T]he seven BOCs control over 80 percent of the local telephone network. The top 10 telephone companies control 92 percent of the local telephone network….For much of the past 60 years, the provision of local telephone service has been a monopoly service, and the telephone companies operating today have been the monopoly suppliers.").

[23] Approximately 41.3 percent of households in CenturyLink's serving area are wireless-only and another approximately 33 percent take voice service from another provider (or none at all).

[24] This figure reflects the 75 million residential ILEC access lines and VoIP connections, 58 million business non-ILEC access lines and VoIP connections, and 311 million wireless accounts listed in the FCC's Local Competition Report, all as of the end of 2013. FCC Wireline Competition Bureau, *Local Telephone Competition: Status as of December 31, 2013* at 3, 5 (Oct. 2014).

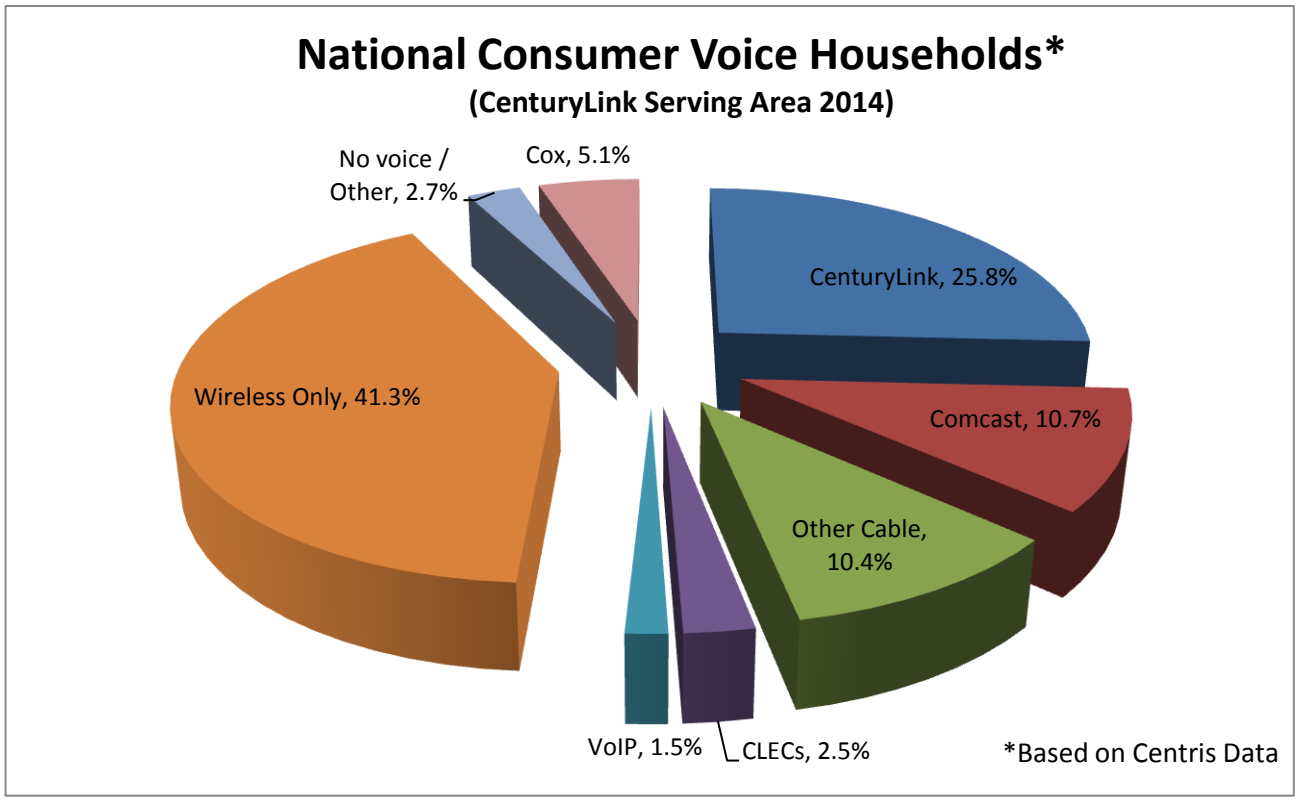

Figure 1

During this time, ILECs have lost more than half their access lines.[25]

This market transformation is attributable to Americans' use of numerous alternatives to ILEC wireline services, such as those offered by cable providers, wireless companies and competitive local exchange carriers (CLECs). Cable providers and telephone companies compete head-to-head for packages of broadband, telephony and voice services. Adding to this intermodal competition, Americans routinely use cell phones for all types of communications services, including broadband. Wireless penetration in the United States has rocketed from less than 13 percent in 1996 to nearly 90 percent today, with more wireless subscriptions than

[25] ILEC access lines have fallen from 165 million in 1996 to 75 million today.

American citizens.[26] Indeed, in just the past eight years, wireless-only households increased from 16 percent to 44 percent nationwide.[27]

ILECs' lack of dominance clearly applies to residential broadband services. With mobile wireless broadband factored in, aDSL accounts for only about 9 percent of residential connections with at least 3 Mbps downstream.[28] Indeed, as of May 2013, 34 percent of cell phone users—or approximately forty-five million Americans—used mobile phones as their primary Internet access device.[29] And, CenturyLink increasingly finds itself competing against non-traditional providers such as Google, which often negotiate special tax and regulatory advantages not available to CenturyLink.[30] In this environment, ILECs are by no means "incumbent" providers of broadband services.

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[26] CTIA, *Wireless Quick Facts*, *available at* http://www.ctia.org/your-wireless-life/how-wireless-works/wireless-quick-facts (last visited Jun. 1, 2015).

[27] Stephen J. Blumberg & Julian V. Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2014*, Division of Health Interview Statistics, National Center for Health Statistics, Centers for Disease Control and Prevention at 1, available at http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201412.pdf (Dec. 2014) (estimating that 44 percent of American homes had only wireless telephones during the first half of 2014) (*CDC Wireless Substitution Report)*. More than one-half of all adults aged 18-44 and children under 18 were living in such households. And, even for those households still subscribing to wireline voice service, 33 percent received all or almost all calls on wireless phones. *Id.* at 2-3.

[28] Wireline Competition Bureau, *Internet Access Services: Status as of December 31, 2013*, at 26 (Oct. 2014), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-329973A1.pdf.

[29] Pew Research Center, *Mobile Technology Fact Sheet*, available at http://www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet/ (visited May 26, 2015); CTIA Wireless Quick Facts, http://www.ctia.org/your-wireless-life/how-wireless-works/wireless-quick-facts.

[30] *Gov. Kate Brown Signs "Gigabit" Tax Bill for Google Fiber*, Oregonian (Apr. 16, 2015), *available at http://www.oregonlive.com/silicon-forest/index.ssf/2015/04/gov_kate_brown_signs_gigabit_t_1.html* (noting that state and local governments had modified property tax, franchise, and transportation regulations at Google's request).

B. The Executive Branch Agencies Should Avoid ILEC-Specific Regulation.

Unfortunately, these market transformations generally are not reflected in governing federal communications legislation and regulations. Despite minor tinkering on the edges, today's Communications Act has not been amended since 1996, and many of the most impactful provisions in the Act are unchanged since 1934. The various titles in the Communications Act, and the major amendments to those titles, were adopted to address specific technologies and market conditions that existed at the time. While they were coherent and reasonable frameworks for those technologies and market conditions, they no longer make sense because of the vast changes in those technologies and market conditions. Thus, the Communications Act and FCC regulations are now founded on meaningless silos and classifications that serve only to confer arbitrary regulatory advantages (and disadvantages) on certain providers, as these classifications determine the applicability of hundreds of prescriptive regulations. In this way, many of the Communications Act's market-opening and consumer protection provisions have now become impediments to further competition and innovation.

In particular, ILECs are singled out for various onerous regulations not applicable to their cable, competitive LEC, wireless and municipal government competitors. For example, ILECs alone among broadband providers are required to share portions of their networks—including their poles, ducts, conduit and rights-of-way—with their competitors. This is the case even though ILECs are no longer dominant providers, much less monopoly utilities. The current "siloed" classifications in the Communications Act are thus outdated and counterproductive.

In the present context, it is critical that the Executive Branch agencies not import these meaningless silos and classifications in its broadband policies. Such asymmetric regulations are "regulatory barriers that may unduly impede either wired broadband deployment or the

infrastructure to augment wireless broadband deployment," and thus should be eliminated pursuant to the Presidential Memorandum.[31] Executive Branch agencies should ensure that any regulation they impose on broadband providers applies equally to all competing providers. Given the fundamental transformations in the communications industry over the past decade, there is simply no justification for regulating competing providers differently.

Consumers today view the services offered by these competitors as largely indistinguishable, as evidenced by the seismic shifts occurring in the marketplace since 1996. It therefore is indefensible, for example, for ILECs to be required to share poles, ducts and rights-of-way with cable and municipal providers, without a reciprocal obligation on those cable and municipal providers. Such unfair advantages can cause an ILEC provider like CenturyLink to divert its limited capital funds to more promising and less regulated parts of its business, such as cloud-based services.

In general, "like" services, meaning those that are used interchangeably, should be subject to the same regulation, regardless of who provides them, the technology that is used to provide them, and how they may have been classified in the past. In particular, Executive Branch agencies should disband and avoid any ILEC-specific regulation, which will dampen further competition and innovation.

VIII. CONCLUSION.

Given its size and scope, the federal government has substantial opportunity to further broadband deployment and adoption. With this in mind, the Council should develop a coherent

[31] *See* Presidential Memorandum (last visited May 30, 2015).

broadband policy applicable to all Executive Branch agencies, consistent with the recommendations outlined in these comments.

Respectfully submitted,

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