

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

In the Matter of )  
 )  
Connect America Fund ) WC Docket No. 10-90  
 )  
Preliminary Determination of Rate-of-Return )  
Study Areas 100 Percent Overlapped by )  
Unsubsidized Competitors )

TO: Chief, Wireline Competition Bureau

**RESPONSE OF LaHARPE TELEPHONE COMPANY, INC.  
TO OCTOBER 23, 2015 EX PARTE PRESENTATION**

LaHarpe Telephone Company, Inc. (“LaHarpe”), by its attorneys, hereby responds to the Written Ex Parte Presentation submitted by JMZ Corporation dba KwiKom Communications (“JMZ”) in this proceeding on October 23, 2015.

JMZ’s *ex parte* filing is far more significant for what it does not assert, than for what it does. Nowhere in its cover letter nor the declaration of its consultant does JMZ present **any** evidence that it can actually serve any of the eleven (11) locations where LaHarpe’s consulting engineers had performed field tests of JMZ’s signal strength during August and September 2015. The Monte R. Lee and Company (“MRL Company”) field tests had found that these eleven locations within LaHarpe’s study area were unable to receive a sufficient signal from JMZ to obtain voice and 10/1 broadband service, and that JMZ is consequently unable to provide voice and 10/1 broadband service to 100 percent of the locations within LaHarpe’s study area. Rather than furnishing evidence that it can actually provide voice and at least a minimal 10/1 broadband service to the eleven locations, JMZ has sought to divert attention from its inability to meet its burden of proof on this key point by engaging in irrelevant semantic and procedural games.

First, JMZ advances the specious assertion that the issue is where it is “offering” service rather than where it actually “serves” (JMZ cover letter, fourth paragraph). A wireless Internet service provider (“WISP”) like JMZ can “offer” service anywhere and everywhere, but there is a huge difference between “offering” such service and actually being able to provide it. The Wireline Competition Bureau’s July 29, 2015 Public Notice makes it clear that far more than mere “offers” of service are required; rather alleged unsubsidized competitors must be “willing and able to provide service to a requesting customer within seven to ten business days without an extraordinary commitment of resources.”<sup>1</sup>

Where, as LaHarpe’s engineering field tests have shown, JMZ’s service is not available over its existing network at multiple locations within LaHarpe’s Kansas study area, JMZ cannot meet this seven-to-ten day test. Moreover, not only has JMZ elected not to produce evidence of service availability at any of the specific locations at issue, its apparent customer service practices appear to indicate that it knows that it is unable to serve 100 percent of the locations within LaHarpe’s study area. The attached letter from Ms. Brandi Chapman, a resident of LaHarpe’s study area (Exhibit A), indicates that she: (a) called JMZ to inquire about taking its service; (b) was told that JMZ was “90 percent sure” that it could serve her, but that it would have to send someone out to her home to check the availability of JMZ’s service there; and (c) was told that she would have to pay a fee of sixty dollars (\$60.00) for the visit to check the availability of service at her home, which fee would be credited against her installation charge if service was available, but would be kept by JMZ if service was not available.<sup>2</sup>

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<sup>1</sup> Public Notice (*Wireline Competition Bureau Publishes Preliminary Determination of Rate-of-Return Study Areas 100 Percent Overlapped by Unsubsidized Competitors*), DA 15-868, released July 29, 2015, at par. 20.

<sup>2</sup> Over and above the fact that JMZ’s apparent customer service practice demonstrates that it knows that it cannot serve 100 percent of the locations within LaHarpe’s study area, the practice of charging a potential customer for a visit to determine whether JMZ’s network can serve the customer shows an outrageous lack of concern for customers and potential customers.

This is not the first time in this proceeding that JMZ has played fast and loose with its burden of proof. In its August 28, 2015 comments in this proceeding, JMZ twice asserted that it “currently offers voice and broadband service to *all locations reported on JMZ’s Form 477* and which overlap 100 percent of LaHarpe’s study area (emphasis added).”<sup>3</sup> However, FCC Form 477 does not request or report any locations at which a fixed broadband provider offers service; rather, it asks for and lists only the census blocks where the provider does or could provision service readily at certain minimum speeds.<sup>4</sup> Given that JMZ did not report **any** locations on its Form 477, its twice-repeated claim that it currently offered service to “all locations reported on [its] Form 477” was erroneous and misleading on its face.

Similarly, in early August 2015, when LaHarpe and its MRL Company consulting engineers checked the online coverage map on JMZ’s website, they found that it showed within LaHarpe’s study area certain areas where JMZ appeared to admit that it did not provide service (colored white), other areas where JMZ appeared to claim that it provided service (colored green), and certain areas on the periphery of the green areas where JMZ appeared to indicate that its service was questionable or uncertain (colored red). However, shortly after August 28, 2015, when JMZ filed its initial comments herein, LaHarpe’s staff and consulting engineer noticed that JMZ’s online coverage map had been modified to show a substantially larger green area and a much smaller white area within LaHarpe’s study area than it had previously indicated. LaHarpe’s technicians, managers and other employees live, drive and work throughout its 66-square mile study area and the surrounding areas, and were not aware of any substantial tower construction or modification projects during the period that would have extended or improved JMZ’s network.

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<sup>3</sup> “Comments of JMZ Corporation in Response to Public Notice,” WC Docket No. 10-90, at p.1; Declaration of Zachery Peres, par. 3.

<sup>4</sup> FCC Form 477, Local Telephone Competition and Broadband Reporting, Instructions, at par. 5.3.

Second, rather than demonstrating that it can actually provide reliable voice and 10/1 broadband service at the eleven field tested locations, JMZ quibbles with several aspects of the MRL Company field tests. As demonstrated in the attached MRL Company study (Exhibit B), JMZ's alleged defects are either erroneous or irrelevant. Perhaps the most curious "field study defect" asserted by JMZ is its claim that it can serve the LaHarpe City Hall from the City of LaHarpe Water Tower (a matter that neither LaHarpe nor MRL Company's field testing have ever raised). JMZ proceeded, at length, to include pictures in its *ex parte* presentation that purported to show that it can serve the LaHarpe City Hall location that was not at issue, while continuing to make no attempt to demonstrate that it can serve the eleven locations where MRL Company's field tests had shown service to be unavailable.

Third, as detailed in Exhibit B, MRL Company went back to the LaHarpe study area again in November 2015 to conduct yet another round of field tests at the eleven locations previously studied. These tests, which were conducted after most of the leaves that interfere with JMZ's service had fallen from the local trees, confirmed once again that JMZ does not provide reliable and sufficient voice and 10/1 broadband services to any of these locations.

Finally, although JMZ tries to laugh off LaHarpe's "self-styled public interest argument" as inapplicable, it certainly is not "inapplicable" or irrelevant to the residents of LaHarpe's study area. The Commission has already determined that advanced telecommunications capability requires broadband speeds of 25 Megabits per second ("Mbps") downstream and 3 Mbps upstream for consumers.<sup>5</sup> Not only has MRL Company's field tests shown (without rebuttal

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<sup>5</sup> 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 1006, as Amended by the Broadband Data Improvement Act, 2015

from JMZ) that JMZ cannot provide 10/1 broadband service to 100 percent of the locations within LaHarpe's study area, but also it appears very clear that JMZ will not be able to provide 25/3 service to many, if any, of such locations within the foreseeable future, if ever. In stark contrast, LaHarpe has constructed and deployed a fiber-to-the-home ("FTTH") network throughout its study area, and can readily provide broadband service at speeds up to 1 Gigabit per second to its customers. In addition, as a carrier of last resort under Kansas statute and as an eligible telecommunications carrier under federal and state regulation, LaHarpe is required to provide evolving minimum levels of voice and broadband services to customers in its study area; in contrast, JMZ has no such continuing obligation and can terminate its services at will. Exactly what public interest benefits are likely to be obtained – by the nation generally or by the residents of LaHarpe's Kansas study area – by depriving LaHarpe of 70-to-80 percent of its revenues (and thereby forcing it to curtail its operations extensively or go out of business entirely) at the behest of a JMZ that cannot currently provide 10/1 service to the entire study area, and that faces a virtually impossible burden of deploying 25/3 and greater broadband service speeds? It will be a particularly bitter pill for LaHarpe area customers to swallow that 10/1 broadband speeds are likely to be considered to be very slow by the 2018-2019 period when LaHarpe's high-cost support might be terminated and JMZ allowed, by default, to become the primary source of broadband service in the subject Kansas study area.

In sum, LaHarpe and its MRL Company consulting engineers have repeatedly shown by field tests that JMZ is not able to provide the requisite voice and 10/1 broadband service to at least 11 specific locations within LaHarpe's Kansas study area. JMZ has made no attempt to assert, much less demonstrate, that it is able to serve the eleven locations, but rather has done as

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Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, GN Docket No. 14-126, FCC 15-10, released February 4, 2015, at par. 45.

much as it could to obfuscate and obscure matters in order to draw attention away from its failure to demonstrate that it is able to serve 100 percent of the locations within the study area. These facts, by themselves, prove that LaHarpe is not overlapped 100 percent by an unsubsidized competitor and should not be deprived of high-cost support under Rule 65.319. In addition, the public interest requires that a carrier like LaHarpe with a FTTH network that is able to provide 1 Gbps or greater service sufficient to satisfy consumer broadband speed demands currently and for the foreseeable future should not be deprived of high-cost support because an alleged “competitor” that cannot offer equivalent or even reasonably comparable service may temporarily be able to meet an interim minimum broadband service standard such as 10/1.

Respectfully submitted,  
**LaHARPE TELEPHONE COMPANY, INC.**

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Dated: December 4, 2015

**CERTIFICATE OF SERVICE**

I, Gerard J. Duffy, hereby certify that I sent the foregoing “Response of LaHarpe Telephone Company, Inc, to October 23, 2015 Ex Parte Presentation” plus Exhibits A and B by electronic mail on this 4th day of December, 2015 to:

Stephen E. Coran  
SCORAN@LERMANSENTER.COM

/s/ Gerard J. Duffy