

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

MOTION TO RECONSIDER

OR, IN THE ALTERNATIVE,

**REQUEST FOR A WAIVER OF
CERTAIN PROVISIONS WITHIN FCC 16-33**

On March 30, 2016, the FCC released its Order establishing an optional “forward-looking, efficient mechanism [of] model-based support” for rural local exchange carriers (RLECs).¹

The USF Reform Order noted the FCC would “not make the offer of model-based support to any carrier that has deployed 10/1 broadband to 90 percent or more of its eligible locations in a state, based on June 2015 FCC Form 477 data that has been submitted as of the date of release of this Order.”² Baraga Telephone Company (BTC) supports the Commission’s desire to reserve the model path for those companies with “significant work to do to extend broadband to unserved consumers in high-cost areas.”³ To ensure the FCC’s vision is effectively implemented, BTC urges the FCC to allow the consideration of accurate June 2015 FCC Form 477 data prior to making a final determination whether or not to issue offers of model-based support.

¹ Report and Order FCC 16-33, hereafter referred to as the “USF Reform Order.” Accessed at https://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0330/FCC-16-33A1.pdf.

² USF Reform Order, ¶166.

³ Ibid.

Background

The first telephone lines in the Baraga area of Michigan were installed in 1907 by A.W. Stark, the grandfather of Baraga Telephone's current general manager. For more than a hundred years A.W. Stark, his family, and the dedicated people of BTC have provided modern telecommunications services to a hard-to-serve part of the country. For example, per capita income in Baraga is only \$17,319⁴ and unemployment is almost twice the state and national averages.⁵

Baraga Telephone has no affiliate providing local exchange services. It is a single corporate entity and has only one study area code. During 2014, BTC filed its Form 477 filings utilizing FRN 0004156139. In 2015, however, BTC obtained a second FRN (0024157745) for use when it was filing as a competitive local exchange carrier (CLEC), and began filing Form 477s under both ILEC and CLEC FRNs.

Earlier this year, BTC realized it had been over-reporting 10/1 availability on its Form 477 Broadband Deployment data. In an effort to comply with FCC 477 reporting requirements,⁶ on January 29, 2016, BTC filed revised June 2015 and December 2015 ILEC Form 477 data with the FCC. Form 477 information on speeds available in Baraga Telephone's CLEC service area were accurate, so BTC staff believed it was not necessary to file revised Form 477s for FRN 0024157745.

Unfortunately, the Form 477 CLEC data for FRN 0024157745 inadvertently reported broadband coverage in the BTC ILEC census blocks. In this way, BTC "double reported" coverage in its ILEC area. The January 29, 2016, revisions corrected one set of 10/1 over-reporting, but did not correct the second set of 10/1 over-reporting. As a result, recent illustrative results released by the FCC did not include projected model-based support for Baraga Telephone under tab 6.1.⁷

⁴ <http://www.census.gov/quickfacts/table/PST045215/26013>, accessed May 24, 2016.

⁵ Unemployment is 9.2% for Baraga, 5.1% for Michigan and 5.0% for the U.S. <http://www.homefacts.com/unemployment/Michigan/Baraga-County/Baraga.html>, accessed May 24, 2016.

⁶ The "FCC Form 477 Local Telephone Competition and Broadband Reporting Instructions" states at 7.5 that "Filers must submit revised data if the filer discovers a significant error." <https://transition.fcc.gov/form477/477inst.pdf>.

⁷ FCC's illustrative results 6.0, based on A-CAM 2.2. Accessed at https://transition.fcc.gov/wcb/ACAM22v2_III_Rprt_6_0_040716_FINAL.xlsx.

Motion to Reconsider

The FCC is embarking on a bold path with its creation of a model path for rural companies. Form 477 data has driven many of the key provisions of this path, so the FCC has taken care to regularly update the A-CAM with updated Form 477 information. In August 2015, for example, A-CAM version 1.1 was updated with December 2014 Form 477 data.⁸ Similarly, on April 7 A-CAM version 2.2 was updated with June 2015 Form 477 data.⁹ The FCC also displayed its dedication to using the best available coverage information when it established a process for competitors and incumbents alike to challenge 477-driven model assumptions on competitive coverage.¹⁰

The FCC's consistent commitment to using the best available data has been laudable. The Commission should maintain that commitment by revising the wording of its USF Reform Order related to the use of Form 477 data. The Order currently states the FCC will "not make the offer of model-based support to any carrier that has deployed 10/1 broadband to 90 percent or more of its eligible locations in a state, based on June 2015 FCC Form 477 data that has been submitted as of the date of release of this Order."¹¹

BTC hereby petitions the FCC to eliminate the phrase "that has been submitted as of the date of release of this Order" within paragraph 66 and should instead provide a reasonable window for companies to correct or update June 2015 Form 477 data. Doing so would ensure that decade-long offers of model-based support really are reserved for those companies with "significant work to do to extend broadband to unserved consumers in high-cost areas."¹² To continue with the Order as written would guarantee that critical provisions of USF reform would be implemented using inaccurate information.

Request for Waiver

BTC understands the FCC may be reluctant to alter the current framework of the USF Reform Order. If the FCC is unwilling to reconsider the wording of paragraph 66, this filing requests, in the alternative, that BTC be granted a waiver setting aside the inaccurate data inadvertently included with the June 2015 Form 477 data filed under FRN 0024157745.

Baraga Telephone is a single corporate entity. There is no separate "CLEC network" within the ILEC footprint. There is no "CLEC coverage" within the ILEC footprint differing from the

⁸ USF Reform Order, ¶145.

⁹ Public Notice DA 16-378, accessed at https://apps.fcc.gov/edocs_public/attachmatch/DA-16-378A1.pdf.

¹⁰ USF Reform Order, ¶71.

¹¹ USF Reform Order, ¶166.

¹² Ibid.

accurate and revised ILEC coverage filed on January 29, 2016. The ILEC census blocks were improperly filed under the CLEC FRN 0024157745. Because those census blocks should not have been included in that data set, when revised Form 477s for FRN 0004156139 were filed in January, BTC did not think to remove the improperly included census blocks from previous filings made under FRN 0024157745.

Baraga Telephone was not cavalier or malicious with its Form 477 filings. It undertook good faith efforts to update inaccurate information when it was discovered, as it is required to do.¹³ Accurate June 2015 Form 477 data for both FRN 0004156139 (ILEC) and 0024157745 (CLEC) are now on file with the FCC and BTC requests the FCC use that corrected data.¹⁴

BTC made a mistake in overlooking the fact that filings made last year under FRN 0024157745 incorrectly contained ILEC census blocks. Various sections of FCC rules and federal law provide appropriate penalties for administrative oversights, like those exhibited by BTC. If this request for a waiver is denied, BTC and its customers will face an unnecessarily draconian penalty, however: preclusion from the model path that was designed to enable broadband deployment in areas like those served by BTC.

Baraga Telephone serves the entire reservation of the Keweenaw Bay Indian Community. The USF Reform Order itself notes the priority the FCC has long placed on improving telecommunications service in Indian Country.¹⁵ The Commission has “observed that communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population, and that greater financial support therefore may be needed in order to ensure the availability of broadband on Tribal lands.”¹⁶ BTC stands ready to deploy better services to its tribal areas, and the FCC has already designed a model that will serve as “the source of financial support” needed to foster that investment. BTC urges the FCC

¹³ The “FCC Form 477 Local Telephone Competition and Broadband Reporting Instructions” states at 7.5 that “filers must submit revised data if the filer discovers a significant error.”

<https://transition.fcc.gov/form477/477inst.pdf>.

¹⁴ Baraga Telephone filed revised June 2015 Form 477 data for FRN 0024157745 on May 25, 2016.

Baraga Telephone’s CLEC filing now only lists coverage in census blocks located outside its ILEC territory. Broadband availability within the ILEC territory is appropriately and properly filed under FRN 0004156139.

¹⁵ USF Reform Order at ¶1368 explains that the FCC “has developed a record of helping ensure that Tribal Nations and their members obtain access to communications services. Telecommunications deployment on Tribal lands has historically been poor due to the distinct challenges in bringing connectivity to these areas.”

¹⁶ USF Reform Order ¶1369.

not to allow an administrative oversight prompted by multiple FRNs to bar BTC and the Keweenaw Bay Indian Community from the powerful opportunity created by the model path.

Conclusion

On the day the FCC released its USF Reform Order, BTC had accurately reported under its ILEC FRN (0004156139) its ability to deliver 10/1 within its ILEC area. Baraga Telephone asks the FCC, either through reconsideration of the USF Reform Order or through a waiver of those provision, to use that accurate and timely-filed information (rather than the improper CLEC filings made under FRN 0004156139) to determine BTC's participation in the Alternative Connect America Model.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Paul Stark', with a long horizontal flourish extending to the right.

Paul Stark
President and General Manager
Baraga Telephone Company