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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Wireline Competition Bureau Announces	)	DA 14-384
Results of Urban Rate Survey for Voice Services;	)	
Seeks Comment on Petition for Extension of	)	
Time to Comply with New Rate Floor	)	

REPLY COMMENTS OF JOHN STAURULAKIS, INC. (JSI)

AND

JSI HIGH COST LOOP SUPPORT CLIENTS

March 31, 2014

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Executive Summary

John Staurulakis, Inc. ("JSI") and its High Cost Loop Support ("HCLS") Clients welcome the opportunity to file these reply comments on the urban rate survey and its application in creating a local urban rate floor.

JSI and its HCLS Clients respectfully request the Wireline Competition Bureau ("WCB") or the Federal Communications Commission ("Commission") declare the local urban rate survey to be incomplete and suspend indefinitely any increases to local rates that are tied to receiving HCLS.

The Commission needs time to revisit its policies due to the fact that its prior policies were based on faulty presumptions. The Commission anticipated that the urban rate floor would be set at a figure close to the sum of $15.62 plus state regulated fees. Based on this presumption, the Commission adopted the urban average to be the rate floor instead of a statistically valid range of confidence below the urban average. In light of the WCB survey results, this policy needs to be revisited to ensure there is a range of reasonableness around the urban average.

The WCB needs to revisit its survey methodology to ensure that it captures comparable services in urban areas with a statistically valid sample. Its evaluation of comparable services must reflect the value customers place on local services, including the value of local calling scopes in rural areas relative to urban areas. Additionally, the comparison of VoIP local service to circuit switched local service is inapposite because VoIP local service generally is fully featured whereas including these same features for circuit switched service requires additional charges. The survey also needs to verify that it is meeting the purpose of the Commission—to compare what customers pay for local service and not simply what providers offer in the urban marketplace.

In releasing its survey, the WCB failed to assess the impact of its survey results on rural customers. New evidence from the Commission reveals that it is sensitive to the fact that rural areas have been home to a disproportionate number of low-income Americans. At minimum, the WCB should assess the impact of a 40 plus percent rate increase directed at these Americans.

These considerations support the indefinite suspension of an increase of the local urban rate floor and a reexamination of the urban rate floor policy instead of a postponement of the urban rate floor as proposed by the Petitioners.

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REPLY COMMENTS OF JOHN STAURULAKIS, INC. (JSI)
AND
JSI HIGH COST LOOP SUPPORT CLIENTS

I. Introduction

John Staurulakis, Inc. ("JSI") and its High Cost Loop Support ("HCLS") Clients (listed in Appendix A) welcome the opportunity to file these reply comments on the urban rate survey and its application in creating a local urban rate floor. JSI is a consulting firm with over 50 years of experience in the communications industry. It provides management, accounting and technical support to hundreds of clients in the nation. Most of these clients are rural incumbent local exchange carriers ("RLECs") or their affiliates that offer service in rural areas of the nation. JSI's HCLS Clients are rural telephone service providers throughout the nation and serve rural communities.

The Wireline Competition Bureau ("WCB") seeks comments on issues related to the local urban rate floor and a specific petition to postpone the application of its survey results. Inasmuch as JSI provides expert guidance on a variety of issues to its RLEC clients, JSI is an interested party to the discussion on how the local urban rate floor will be applied. JSI's HCLS Clients are directly impacted by the WCB's actions in this matter. JSI and its HCLS Clients respectfully offer these reply comments for the WCB's and Federal Communications Commission's ("Commission's") consideration.

Background

On March 20, 2014 the WCB announced the results of its most recent urban rate survey for fixed voice services.[1] This survey was developed by the WCB under delegated authority from the FCC granted it in the USF/ICC Transformation Order.[2] The WCB developed its survey in 2013 and completed it in January 2014. The WCB declared that the 2014 rate floor is to be used for rates subject to 47 CFR §54.318 limitations of HCLS and Connect America Fund ("CAF") Phase I frozen support.

In the USF/ICC Transformation Order the Commission found:

> [i]t is inappropriate to provide federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability. … Specifically, we do not believe it is equitable for consumers across the country to subsidize the cost of service for some consumers that pay <u>local service rates that are significantly lower</u> than the national urban average.[3]

In adopting this policy, the Commission anticipated that the 2014 rate floor would be "close to the sum of $15.62 plus state regulated fees" (State regulated fees to be

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[1] *Public Notice,* DA 14-384, Wireline Competition Bureau, March 20, 2014 ("WCB-PN").
[2] *See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17694, 17751, para. 85 (2011) ("USF/ICC Transformation Order"), *pets. for review pending sub nom. In re: FCC 11-161, No. 11-9900* (10th Cir. argued Nov. 19, 2013).
[3] USF/ICC Transformation Order at 237 (Emphasis supplied).

considered include only state subscriber line charges, state universal service fees, and any mandatory expanded area service charges).[4] Based on its presumption that the 2014 rate floor would be close to its 2007 survey as reported in 2008, the Commission anticipated that only residential rates at or above the urban rate floor will be deemed reasonably comparable to urban rates after a multi-year phase-in.[5] This decision by the Commission to ignore rates that are statistically similar to the national urban average and yet <u>below</u> the urban average is now shown to be a serious flaw in public policy.

In announcing the results of its survey, the WCB failed to release any meaningful information regarding the study and the *post hoc* change it made to the study—a change that seriously jeopardizes the reliability and purpose of the study results. Questions about the performance of the study suggest that the WCB must seek Commission guidance on various items discovered in the processing of the survey. This guidance is critical because without it the survey and how the WCB is using the results places in jeopardy the Commission's policies.

The petition mentioned in the WCB-PN seeks to postpone the application of the survey results a few months in order to allow carriers time to address the need to increase their local rates and/or selected state charges in order to preserve HCLS and CAF Phase I frozen support. No parties objected to this petition. JSI and its HCLS Clients strongly

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[4] *Id*. at 243, see also 47 CFR §54.318(e). *The 2008 Reference Book of Rate, Price Indices, and Household Expenditures for Telephone Service* ("Reference Book") Table 1.1 reports that the average monthly charge for residential flat-rate service was $15.62 and that the combined federal and state subscriber line charges ("SLCs") averaged $5.74. Since the data show very few, only one, carriers reporting a state SLC for the 2008 report, the presumption was that $15.62 plus a few dollars would be the 2014 rate floor.
[5] *Id*.

urge the Commission to postpone indefinitely any increase of the rate benchmark until it revisits its presumptions used to develop its current policies. Until the Commission takes this important action, the WCB should reconsider whether its survey is complete. Given all the problems now apparent in the survey and the *post hoc* adjustment it made to fit the survey results to its policies, there is sufficient justification for the WCB to step back and examine how it is using its delegated authority to further the policy objectives of the Commission. Clearly an indefinite postponement is warranted. Given the obvious incomplete nature of the survey, a postponement is well within the purview of the WCB's delegated authority.

II. Serious Doubts About the Survey

JSI and its HCLS Clients have examined the scant information released about the survey and find it lacking sufficient substance to be able to seriously review the survey and determine the level of confidence the Commission should place in its results. Data releases for the Commission's prior urban surveys are very transparent. History clearly shows that the WCB failure to provide the details and the summary statistics from the survey is highly irregular. The failure to provide full transparency raises serious doubts about the survey and puts into question whether the survey is complete for public policy purposes. To illustrate the highly irregular release of the recent urban survey, one only needs to look at the FCC's website to discover that in the past all the urban survey data has been made public.[6] Moreover in the FCC's Reference Book and other publications,

[6] *See* http://www.fcc.gov/encyclopedia/urban-rate-survey-data, under the heading "Archived Data from Previous Urban Rate Surveys"

prior urban survey results were shown with historical trends for each charge and standard deviations reported to calculate the reasonably comparable rate ceiling. None of these data were released this time by the WCB.

The only information released about the survey comes from the WCB-PN released on March 20, 2014 and from a WCB USF progress report dated March 18, 2014 but not released until March 24, 2014.[7] From the Report we understand the WCB collected rates from providers of fixed services in 500 Census Tracts. These providers include incumbent LECs, non-incumbent LECs, incumbent LECs using circuit switched technology, incumbent LECs using VoIP technology, and non-incumbent LECs using circuit switched and VoIP technology.[8]

The national urban average for unlimited flat-rate residential voice service is $26.85.[9] The WCB did not report this $26.85 national urban average in the WCB-PN. Instead, without citing any guidance from the Commission and upon its own authority, the WCB reported the incumbent LEC national urban average of $20.46.[10] Its stated reason for making this *post hoc* change to the survey was that upon review it discovered that non-incumbent LEC rates were higher than the incumbent LEC rates and the Bureau presumes "this is because non-incumbent LEC providers charged rates similar to the

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[7] *Universal Service Implementation Progress Report, Wireline Competition Bureau,* WC Docket No. 10-90, March 18, 2014 ("Report"). The Report was received and posted on the ECFS on March 24, 2014, two weekdays after the WCB-PN.
[8] Report, Figure 7.
[9] *Id.*
[10] The "circuit-based" rate for incumbent local exchange carriers in the report was $20.24. This rate is lower than what the WCB selected.

incumbent LECs' monthly charge plus the federal SLC."[11] Two disturbing doubts arise based on this information. First, it has been obvious to anyone in the industry that non-incumbents price their competitive services based on what the customer pays and not based on subparts of arcane incumbent pricing structures. This must have been well understood by the Commission when crafting its policy in the USF/ICC Transformation Order. Yet, the Commission did not instruct the WCB to perform a study to determine an "incumbent only" national urban rate. So the WCB took it upon itself to modify independently specific instructions given by the Commission.

Rather than announce the national urban average rate, the WCB adopted the incumbent LEC urban average of $20.46. Why it selected this incumbent rate is unclear. The WCB had three incumbent rates to choose from: the rate it chose, an incumbent circuit switched rate of $20.24 and an incumbent VoIP rate of $29.95. Perhaps the most comparable rate for HCLS recipients would have been the circuit switched rate. JSI's understanding of VoIP services offered in the market is that providers build in other functions and features, including voice mail, to the VoIP service offering—this VoIP offering is not considered a bundled rate because it is just a fully featured voice service and does not include broadband or video services.[12] Thus, VoIP service rates may be incompatible with a comparison to basic local exchange service rates. None of these critical issues were discussed by the WCB. Without a full review of the survey and the services underlying

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[11] Report at 13 and WCB-PN at 2.

[12] In creating its survey, the WCB understood qualitative differences between services. This is the reason it did not attempt to create an average based on wireline and wireless services. *See In the Matter of Connect America Fund*, WC Docket No. 10-90, Order, WCB and Wireless Telecommunications Bureau, DA 13-598, April 3, 2013 ("Survey Order") at 6. There are qualitative differences between VoIP and circuit switched local service prices as well.

the reported rates, JSI and its HCLS Clients cannot see any reasonable action other than having the WCB declare that its survey is incomplete until further review.[13]

The second disturbing issue resulting from the WCB's *post hoc* elimination of survey observations has to do with retaining a statistically valid sample size. This is important because it will inform the Commission on the level of confidence that should be assigned to the results. (Note: the WCB did not report any survey information that would allow one to understand the level of confidence or precision the survey results possess.) When the WCB tossed out non-incumbent provider observations, how did it ensure that it retained a statistically valid sample of the incumbents? The only discussion by the WCB on this point is the reference that it created a "statistically valid sample" *ex ante* and then gathered observations from these providers.[14] We have no guidance from the WCB that after selecting a statistically valid sample of providers and then tossing out an unreported number of these observations that the survey still retains statistical validity to generate a national average with a level of precision or confidence that supports public policy.

Lastly, upon another review of the Survey Order, it appears that the WCB's policy to not have grandfathered services and pricing reported in the survey likely causes some of the

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[13] Neither JSI nor its HCLS Clients suggest using the $26.85 urban average as the local urban rate floor. As discussed, *infra*, the problems with the survey and the error in the Commission's presumption show the survey needs to be reexamined and the policy created from the Commission's faulty presumption needs to be changed.

[14] Survey Order at 8-9. ("We will select urban providers using FCC Form 477 data so as to create a statistically valid sample…independent samples will be chosen for the fixed voice and fixed broadband sections of the survey. … we will survey a statistically valid sample generated from all fixed terrestrial providers in each MSA.")

problems in the survey results.[15] JSI observes that urban service providers have the incentive to compete for customers with bundles of services. Urban providers also have the incentive to price stand-alone voice services at high levels to entice customers to take bundles—the bundle price looks good compared with a higher stand-alone price. Existing stand-alone customers are not affected because their rates are grandfathered at preexisting lower rates. The elimination of grandfathered rates needlessly increases the national average and is not representative of what customers pay for service in urban areas when receiving stand-alone services. Here arises a question of purpose: is the survey attempting to determine what urban customers pay or what urban customers are offered when purchasing new stand-alone voice service? JSI argues the survey is misdirected in this fundamental purpose. The Commission's purpose is to ensure consumer "pay" for local service that is statistically comparable to the national urban average.[16] Grandfathered rates are a necessary component of what urban consumers pay for local service and are omitted from the WCB's survey.

In light of these concerns, JSI and its HCLS Clients urge the WCB to revisit its survey design. The WCB indicated it would undertake a review of its survey results after evaluating the data collected in this initial Form 477-based survey.[17] Instead of blindly

[15] Survey Order at 13.
[16] USF/ICC Transformation Order at 237 (Emphasis supplied). JSI and its HCLS Clients emphasize that services must be comparable—including the relative value customers place on local service where local calling scopes vary considerably. Rates for urban local service can allow local calling for millions of customers, whereas rates for rural local service, including mandatory EAS rates, allow local calling for comparably far fewer customers. The limited local service calling scope in rural areas affects the customer's perceived value of the service and should be accounted for when attempting to compare rural rates to urban rates.
[17] Survey Order at note 22.

applying a faulty survey, the WCB should declare its survey incomplete for purposes of establishing the rate floor.

Declaring the survey incomplete will suspend the application of the local urban rate floor. The Commission stated in its USF/ICC Transformation Order:

> We will phase in this rate floor in three steps, beginning with an initial rate floor of $10 for the period July 1, 2012 through June 30, 2013 and $14 for the period July 1, 2013 through June 30, 2014. Beginning July 1, 2014, and in each subsequent calendar year, the rate floor will be established after the Wireline Competition Bureau completes an updated annual survey of voice rates.[18]

FCC regulation §54.318(f)(3) states that "beginning on July 1, 2014 and thereafter, the local urban rate floor will be announced annually by the WCB." Announcing that the survey is not complete allows the WCB to suspend the application of the policy until key issues can be resolved. The WCB will have the support of the Chairman, and likely all Commissioners, to take independent action on the survey and refer it to another Bureau for independent review—as was done with the WCB's Quantile Regression Analysis. On March 26, 2014, Chairman Wheeler, speaking about the urban benchmark to Congress stated, "I am going to be proposing that we do a couple of things. First that we move the effective date to give people more time to get ready; and two, we need to be thinking about how to phase it in to avoid sticker shock." JSI and its HCLS Clients respectfully suggest the WCB give the Commission some time to revisit its policy to ensure that the purposes are aligned with the data. This time can be given by continuing to work on a robust survey.

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[18] USF/ICC Transformation Order at 239 (Emphasis supplied).

III. Need to Revisit Policies Because of Survey Results

Based on the initial results of the WCB's survey—results that need to be vetted to ensure statistical properties hold after tossing out a portion of the randomly generated sample observations and that the correct rates are being collected—it is clear the Commission needs to revisit is policies regarding the rate benchmark floor.

JSI and its HCLS Clients observe that the Commission's rule has been based on a faulty presumption and this leads to uniformly bad public policy. The Commission stated:

> It is inappropriate to provide federal high-cost support to subsidize local rates beyond what is necessary to ensure reasonable comparability. Doing so places an undue burden on the Fund and consumers that pay into it. Specifically, we do not believe it is equitable for consumers across the country to subsidize the cost of service for some consumers that pay local service rates <u>that are significantly lower than the national urban average</u>.[19]

The Commission was addressing an equity issue and its policy was developed to address local rates that are "significantly lower than the national urban average." Developing significance in this case seemingly requires statistics. In this survey based on a sample of providers there is a sample deviation around the average. This range around the average results in a statistically comparable range for rates. Any local rate in this range would be considered similar to the average. The Commission has long used two standard deviations above the national average to determine a reasonably comparable rate ceiling. However, in the USF/ICC Transformation Order, the Commission rejected using a range of two standard deviations below the average because it claimed it would render the floor meaningless or non-binding. Furthermore, the Commission stated: "In the present case,

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[19] USF/ICC Transformation Order at 237 (Emphasis supplied).

we are expecting to set the end point rate floor at the average rate [after a two-year phase-in period]."[20] However, all of this policy was based on the presumption that the local urban rate floor would be far lower than what the WCB survey reported. The Commission stated "we anticipate that the rate floor for the third year will be set at a figure close to the sum of $15.62 plus state regulated fees."[21] The WCB survey result of $26.85 for all providers clearly far exceeds the Commission's presumption that informed its policy choice. JSI and its HCLS Clients submit the Commission would not have created the benchmark floor at the average urban rate had it known the stand-alone urban rate. The time is ripe to revisit the Commission's policy. On March 27, 2014, Commission Pai stated before the Senate Appropriations Committee that he hopes "the Commission will soon freeze the rate floor indefinitely and reexamine this policy." JSI and its HCLS Clients recommend the same.

IV. WCB Has a Duty to Lead

All of the FCC's Bureaus have been told by Chairman Wheeler to lead. When something is terribly wrong, the Chairman insists that a Bureau doesn't simply say that we are following the policy or the rules. This is especially true when the Bureau has been given authority to perform a study and deliver on the overarching policy goal of ensuring reasonably comparable rates. The Commission "expected to set the end point rate floor at the average rate" but when it became obvious that this was based on a faulty premise, the WCB should have suspended its survey until important policy questions could be

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[20] *Id*. at 243 (Emphasis supplied).
[21] *Id*.

resolved. Even now, the WCB seemingly has the authority to declare its survey incomplete and not apply the local urban benchmark floor until key technical and policy compliance issues can be resolved.

V. WCB Failed to Assess Impacts of Questionable Survey Results

Another alarming relevant factor in this proceeding is the absence of the WCB assessing the impact of its actions on consumers and carriers in rural areas of the nation. In the face of unprecedented local rate increases the WCB remains silent on how its actions affect rural consumers. Despite this silence, the Commission is well aware of the effect of 40 plus percent local rate increases.

In the USF/ICC Transformation Order the Commission determined that "staff analysis suggests that this rule change <u>should not disproportionately affect</u> low-income consumers, because there is no correlation between local rates and average incomes in rate-of-return study areas."[22] However, more recently in its IP Transformation proceeding the Commission has observed "rural areas have a higher percentage of elderly residents, who tend to have lower broadband adoption." Furthermore, the Commission recognized that "Since the 1960's, when poverty rates were first officially recorded, rural areas have been home to a disproportionate number of low-income Americans."[23] It

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[22] *Id.* at 244 (Emphasis supplied).
[23] *In the Matter of Technology Transitions, …, Connect America Fund …*, Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, GN Docket No. 13-5, WC Docket No. 10-90, January 31, 2014, FCC 14-5 at 88.

appears the Commission is aware that rural areas have more low income consumers and a 40 plus percent rate increase directed at these consumers merits at least some discussion about how this policy will affect rural communities.

The JSI HCLS Clients have seen steady declines in local service subscriptions due in part to the recent increases in local rates and additional Commission mandated access recovery charges—which increase annually up to a $3.00 maximum charge over six years.[24] Upon increasing rates to $14.00 for local service that has a small local calling scope, one JSI HCLS Client received a letter from a long-time cooperative member expressing his angst over the increase. He said: "This rate increase exceeds the value that I place on the minimal phone service that I receive. Please CANCEL MY ACCOUNT AND SERVICE. … It has obviously been a long run together but it is time for it to end." (Emphasis in original) This customer made his choice. Yet the ability to provide wireless emergency services in this rural carrier's study area is spotty and customers may not realize that voting with their feet can lead to less than expected access to the network when emergencies arise. JSI has many more examples and data that show the declines in local service customers since implementation of the USF/ICC Transformation Order. JSI also knows that its clients experience line loss for a variety of reasons; nevertheless, price is clearly one of the main reasons. Consideration for rural customers appears absent from the WCB's actions. The Commission needs to revisit its rural customer policies to better address the needs of all citizens of the nation.

[24] A $3.00 increase resulting from the ARC in what customers pay for local service amounts to a 19.2 percent increase based on the Commission's $15.62 urban rate when it adopted the ARC. The percentage increase is even higher for rural carriers whose rates are below the $15.62 rate for local service.

VI. Conclusion: Recommended Actions

JSI and its HCLS Clients respectfully request the WCB or Commission declare the local urban rate survey to be incomplete and suspend indefinitely any increases to local rates that are tied to receiving HCLS. The Commission needs time to revisit its policies and realign its instructions to the WCB so that the evaluation of what rates are reasonably comparable fit within a level of confidence around the urban average of comparable services and further the goals of the Commission to preserve and advance universal service in rural areas of the nation.

Respectfully submitted,

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Appendix A

BEK Communications Cooperative
Big Bend Telecom, LTD
Cameron Telephone Company
Canadian Valley Telephone Company
Clear Lake Independent Telephone Company
Consolidated Telcom
Dakota Central Telecommunications Cooperative
Dickey Rural Telephone Cooperative, Inc.
Griggs County Telephone Company
Halstead Telephone Company
Hill Country Telephone Cooperative, Inc.
Inter-Community Telephone Company, LLC
ITS Telecommunications Systems, Inc.
Midstate Telephone Company
Miller Telephone Company
Missouri Valley Communications, Inc.
Moore and Liberty Telephone Company
Nemont Telephone Cooperative, Inc.
North Dakota Telephone Company
Northwest Communications Cooperative
Poka Lambro Telephone Cooperative, Inc.
Polar Communications Mutual Aid Corporation
Randolph Telephone Membership Corporation
Red River Rural Telephone Association
Reservation Telephone Cooperative
Ritter Communications
SRT Communications, Inc.
Turtle Mountain Telephone Company
United Telephone Mutual Aid Corporation
West River Telecommunications Cooperative
West Side Telephone Company
Wolverton Telephone Company
Zenda Telephone Company