

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

REPLY COMMENTS OF JOHN STAURULAKIS, INC.

I. Introduction

John Staurulakis, Inc. (JSI) hereby files these reply comments in support of several proposals raised in the Federal Communications Commission's (Commission's) Further Notice of Proposed Rulemaking released June 10, 2014.¹ While many issues are addressed in this FNPRM, JSI limits its reply comments to three areas critical to the ongoing development of federal universal service policy for rural rate-of-return incumbent local exchange carriers (RLECs).

¹ *Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54 (rel. June 10, 2014) (“Report and Order” or “FNPRM”).

Since the USF/ICC Transformation Order was released in 2011, the Commission has identified several key issues related to federal universal service policy. One of the most important policies repeatedly emphasized by the Commission is its intent not to provide support to areas where there is a competitive service provider offering service to end-user customers. For Price-Cap carriers, the Commission examines this policy at the 2010 Census Block level as defined by the U.S. Bureau of the Census.² Thus, for Price-Cap carriers, the Commission has determined that for purposes of its Connect America Model (CAM) support, if there are locations in a Census Block that are offered qualifying services from a competitive service provider, then by regulation the Commission assumes that all locations in said Census Block are not eligible for CAM-based federal universal service support.

The Commission also has a competitive overlap policy for RLECs. In a portion of the June Order, the Commission explained that its competitive policy for RLECs will now be implemented and directed the Wireline Competition Bureau (WCB) to finalize the Commission's methodology.³ Currently the regulation adopted by the Commission requires that 100 percent of the residential and business locations within a study area be offered service by a competitive service provider before federal universal service support for the study area is phased out.⁴

JSI observes that the discussion in the FNPRM raising the near-term reform for RLECs touches on the Commission's Census Block policy, as does the longer term reform to move to

² A Census Block is a specific geographic polygon intended to capture between 0-600 residents. See U.S. Census Bureau definitions. There are 11,155,486 census blocks in the nation including Puerto Rico; approximately 2,700,000 of these census blocks have zero residents.

³ NTCA has filed a petition for reconsideration and or clarification on this portion of the order that is pending before the Commission. JSI fully supports NTCA's petition.

⁴ 47 CFR § 54.319.

some type of model based support as discussed in the ITTA plan. It is vital for the Commission to get its geographic details right so that federal universal service support can be fairly and equitably distributed. In this matter, JSI offers the following.

II. Jointly Served Census Blocks: The Commission needs to examine its census block assignment for rural carriers to address jointly served census blocks for RLECs.

JSI understands that for purposes of its CAM, the Commission assigns census blocks split by a Study Area Boundary (SAB) based on a determination of whether the centroid of the Census Block lies within a SAB.⁵ In these instances, a census block is jointly served by at least two incumbent local exchange carriers. Assuming that the census block is jointly served by two incumbent local exchange carriers, if this particular geographic point is with the SAB of the first carrier, then the entire census block is assigned to the carrier's study area—including the portion of the census block that is clearly outside the SAB and served by the second adjacent carrier. Conversely, if the centroid of the census block lies outside a particular SAB for the first carrier, then the entire census block is assigned to the second adjacent carrier's study area—including the portion of the census block that is clearly inside the SAB of the first carrier. This mismatch at the boundary is how the Commission applies rough justice for assigning locations to study areas. JSI observes that while this policy has been examined for Price-Cap carriers, whose study areas can be very large and can include a multitude of census blocks, the Commission has not yet examined how to address the jointly served census blocks where an RLEC's federal support rests in the balance.

⁵ The centroid is a specific geographical point, expressed by a latitude and longitude value, that represents the geographical center of the Census Block polygon.

JSI supports the Independent Nebraska Rural Independent Companies' (Nebraska Companies') call for technical workshops at the Commission to examine the inputs used by the CAM if/when the CAM is examined for use by the RLECs.⁶ JSI agrees with this request for workshops and believes the first items to be discussed should be issues of geography—the RLEC treatment of jointly served census blocks should be on the agenda. JSI recognizes that for large Price-Cap carriers, what happens to relatively a small number of census blocks on the edge of their SABs may have no meaningful significance for their support; however, for RLECs, JSI submits that due to the smaller size of the study areas and the vastly smaller number of census blocks assigned to these smaller study areas, how census blocks are assigned can result in a significant difference in support for individual carriers.

III. Partially Served Census Blocks: The Commission should revisit its proposals addressing partially served census blocks.

Another important concept employed by the Commission is how to treat partially served census blocks. In the case of Price-Cap carriers, the Commission has determined that if a census block is partially served, then for purposes of CAM support it is assumed that the entire census block is served.⁷ In situations involving RLECs, the Commission has proposed that High-Cost Loop Support and Interstate Common Line Support be restricted based on the determination of whether a census block is served by a competitive service provider.⁸ JSI submits that the Commission should clarify its policy on how RLECs are to classify census blocks partially

⁶ Comments of the Nebraska Rural Independent Companies, page 43.

⁷ As recently as the June, the Commission confirmed that for Price-Cap carrier purposes "partially served census blocks will continue to be treated the same as fully served census blocks..." Report and Order, paragraph 169.

⁸ Report and Order, paragraph 265. Also, the Commission has employed a census block policy on RLECs regarding whether a request is reasonable. Report and Order, paragraph 68.

served by a competitive service provider.⁹ In so doing, JSI recommends that the Commission look to its existing RLEC regulations and adopt specific RLEC policy guidance on partially served census blocks.

The Commission requires that 100 percent of the residential and business locations in a study area be offered service by a competitor before the RLEC geography be ineligible for federal universal service support.¹⁰ JSI agrees with the Nebraska Group in recommending that the Commission require 100 percent of the residential and business locations in a census block be offered service by a competitive service provider before the census block is considered ineligible for federal universal service support.¹¹ JSI argues this policy clarification is reasonable and follows the Commission's precedent for RLECs. Furthermore, requiring 100 percent coverage of RLEC census blocks will ensure that residential and business locations in large census blocks are treated fairly.¹² Federal policy for RLECs shouldn't assume that end-user customers have competitive alternatives just because they live in a census block where one end-user is offered competitive service. JSI urges the Commission adopt an RLEC policy that differs from its policy used for Price-Cap carriers.

This policy has impact on a number of existing and proposed policies. RLECs are given flexibility to use census block classifications for determining reasonable requests for service.

Furthermore, the Commission is seeking to use a census block policy to limit federal universal

⁹ This issue is timely because the Commission has instructed RLECs to look to the treatment of census blocks in the CAM to guide its judgment on whether a census block is competitively served. *Id.* In providing this guidance, the Commission assumes that its Price-Cap carrier policy should inform RLEC policy.

¹⁰ 47 CFR § 54.319.

¹¹ Nebraska Group, pages 4, 8, and 13.

¹² Census blocks can be very large. One census block in Utah is reported to be 947 square miles. (Comments of State of Utah Governor's Office of Economic Development, page 2.)

service support for new investment. And lastly, in examining whether the CAM should be modified to address voluntary elections away from rate-of-return regulation, the Commission classifies locations based on census blocks designations.¹³

JSI recognizes that the Commission will need to revisit its data collection policies to address this recommended change. This year's Form 477 will not provide the level of detail from competitive service providers to judge whether a census block is 100 percent competitive. Deployment information to be reported on Form 477 is going to be collected at the census block level; however, the data will only give the Commission an indication of the presence of competitive deployment in the census block and it will not give any guidance whether the competitive service provider in fact provides service throughout the census block. While Form 477 does not enable the Commission to judge, JSI submits that the Commission will have to address this matter in its current 100 percent overlap policy for study areas as well. The WCB has been instructed to finalize a methodology to judge whether 100 percent of the residential and business locations in a study area are offered service by a competitive service provider. The WCB will not be able to rely solely on Form 477 to make this determination because the necessary data are not going to be reported. JSI urges the Commission to reflect on the proposal made by the Nebraska Group that requires competitive service providers to affirmatively certify that a census block is fully served as a first requirement to disqualify a geographical area from federal universal service support.

¹³ In phase two of the ITTA proposal, electing RLECs would receive support based on a modified CAM. This model uses census block designations to qualify locations for federal model support.

One last recommendation JSI offers to the Commission regarding partially served census blocks relates to the use of RLEC services to provide competitive services. If a competitor purchases or is leasing facilities from an RLEC to provide competitive services in a census block, then the presence of this competitor should not be used as a reason to limit RLEC federal universal service support. In this instance, the RLEC is providing essential facilities used by the competitor and the federal universal service support received by the RLEC is used to recover a portion of its costs associated with its facilities. Since the competitor does not own the essential network necessary for the provision of competitive services, JSI submits the Commission should continue to provide support to RLECs that do in fact provide the critical network components used by competitors. Before disqualifying a geographic area served by an RLEC, the Commission should require that competitive service provider certify that it owns all of the infrastructure necessary in offering competitive services to customers in the area.

IV. Qualification of Competitive Service Provider

The Commission received a number of comments addressing the qualification of competitive service providers. JSI recommends the Commission adopt the proposals made by the Rural Associations (Associations). The Associations raise many important issues the Commission should address when qualifying a competitive service provider. These recommendations should be adopted. Specifically, the Associations state that thoughtful and detailed analysis of the elements of a qualifying carrier is needed "rather than reliance upon

untested presumptions, static 'snapshots in time' of service capabilities and self-asserted blanket claims regarding service delivery."¹⁴

JSI observes that the Commission may have lost its way in examining provider qualifications. The Telecommunications Act of 1996 (Act) provides a clear mechanism to judge the eligibility of a carrier in Section 214. The Commission appears to be attempting an end-run around the purpose of the statute by allowing a competitor to self-qualify and who will ultimately render ineligible an area for federal universal service support. The Act directs state commissions to examine the qualifications of a carrier for eligibility to receive federal universal service support. JSI observes the rendering of ineligibility of support for an area should receive the same level of scrutiny by state commissions. State commissions are better positioned to judge the qualifications of a competitive service provider than the Commission.¹⁵ While the Commission would be at a loss to judge the service capability of a competitor in a small hamlet, a state commission would be familiar with the area and would be able to determine whether a competitor in fact offers services to its residents. Qualification of competitive service providers requires a fact-based determination that state commissions are best positioned to judge. JSI recommends the Commission revisit its existing and proposed qualification requirements and realign them with the purposes of the Act.

¹⁴ Comments of the Rural Associations, page 35.

¹⁵ At least one state has recommended that geography and qualification matters be subject to state review. State of Utah Governor's Office of Economic Development, page 2.

V. Conclusion

JSI offers three important and far-reaching recommendations related to geography. The Commission is using census block policies to shape the obligations and eligibility of federal universal service support for RLECs. A careful review of these policies is warranted inasmuch as price-cap policies do not sufficiently address the unique circumstances faced by RLECs.

JSI recommends the Commission refine its approach for jointly served census blocks, partially served census blocks, and the qualifications of competitive service providers for areas served by RLECs. Since geographic judgments will need to be fact based, the Commission needs to revisit the data it collects from competitive service providers and should rely on state commissions who are better able to judge state-specific facts.

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Respectfully submitted,

John Staurulakis, Inc.

/s/ Manny Staurulakis

Manny Staurulakis

President

John Staurulakis, Inc.

7852 Walker Drive, Suite 200

Greenbelt, Maryland 20770

(301) 459-7590