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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF JOHN STAURULAKIS, INC.

April 18, 2011

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EXECUTIVE SUMMARY

In its comments, John Staurulakis, Inc. ("JSI") provides recommendations on the Federal Communications Commission's ("FCC's" or "Commission's") goals and priorities, near-term reforms, the elimination of rate-of-return regulation, the establishment of a reasonable and equitable transition path, and initial comments for long-term intercarrier compensation.

JSI recommends the Commission reject certain reforms proposed in its Notice of Proposed Rulemaking. These reforms are likely to reverse the gains in universal service made in rural areas of the nation and will chill private investment in the highest of the high-cost areas of the country. Founded on a principle of getting the most "bang for the buck," the Commission appears to have departed from clearly defined Congressional mandates that give guidance to the purpose and use of federal universal service support. Accordingly, JSI recommends the Commission adopt proposals to reform federal support that remain true to the goals and priorities established by Congress.

JSI provides guidance on the financial impact of near-term reforms and recommends alternatives to the Commission's proposals. Furthermore, JSI emphasizes the absolute necessity of establishing a reasonable and equitable transition path for rural rate-of-return carriers when reforming and repurposing federal universal service. The Commission should not jump to the conclusion that rate-of-return regulation is less effective in delivering universal service to rural high-cost areas of the nation. To the contrary, the performance of price-cap incentive regulation shows poor performance in delivering universal service.

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John Staurulakis, Inc. (“JSI”) welcomes the opportunity to file these comments in response to the Federal Communications Commission (“FCC” or “Commission”) Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking released February 9, 2011 in the above captioned matters.[1] JSI is consulting firm offering regulatory, financial and business development services to more than two hundred independent rate-of-return regulated incumbent

[1] *In the Matter of 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 an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, and Lifeline and Link-Up*, WC Dockets No. 10-90 et al., FCC 11-13 (rel. Feb. 9, 2011) (“NPRM”); 76 Fed. Reg. 11632-11663 (2011).

local exchange carriers ("ILECs") throughout the United States. Among the various services offered to its clients, JSI assists with matters, including but not limited to preparing and submitting jurisdictional cost studies as well as preparing universal service fund data to the National Exchange Carrier Association ("NECA"), preparing and filing tariffs with state commissions, negotiating interconnection and traffic exchange agreements with other carriers, as well as other matters related to the Commission. Accordingly, JSI is an interested party in this matter and offers the following comments.

I. Introduction

The principle of universal service has been an unparalleled success. Through federal universal service programs, rural communities have been able to access modern telecommunication and information networks — and thereby benefit as recipients of the variety of services that electronically interconnect our nation. The FCC has recognized that public funding support is needed to spur private investment where it is not economically viable to deploy and/or operate broadband networks.[2] As the Commission seeks to reform and repurpose the current federal universal service programs, it is important to keep in mind two core principles: First, telecommunications and information services[3] are currently provided over networks that have already been installed and require ongoing operational and maintenance support in a 24/7 environment.[4] Universal service is not a box of Kellogg's Corn Flakes® — a commodity purchased, placed on a shelf, and then consumed at breakfast time. Ongoing

[2] *Id.* at 1.

[3] Herein JSI will refer to "Advanced Telecommunications Services" and "Information Services" simply as "Information Services."

[4] JSI notes that both telecommunications and information services are provided over one integrated network. Thus, there is not an old "voice network" and a new "information network." Instead, these services are provided over the same network.

operational and maintenance expenses constitute a significant portion of annual costs associated with these rural networks.

Second, as the Commission seeks to expand the scope of federal universal service programs, the needs of existing network providers that currently operate in geographically and/or demographically challenging areas of the nation cannot be forgotten. Simply put, the ongoing program is successfully connecting rural areas of the nation served by rural ILECs with access to telecommunication and information services. As the Commission seeks to remedy the apparent lack of these services in rural areas of the nation served by Regional Bell Operating Companies ("RBOCs") and other larger price-cap regulated carriers, the temptation to remove support from rural ILECs and give it to providers seeking to serve the RBOC areas should be resisted. Budget pressures are evident under the current contribution methodology employed by the Commission; however, the value of adding broadband as an explicitly funded service is enjoyed by far more end users and providers than are currently funding federal universal service programs through the telecommunications revenue formula. These entities should be required to contribute to the repurposed federal universal service programs in a manner correlated to the value they receive from using broadband networks that span the nation.

With these two core principles in mind, JSI welcomes the opportunity to offer its comments on a variety of items raised in the NPRM. JSI expects the Commission will receive a large volume of comments from a variety of individuals and groups associated with universal service and thus will limit its initial comments to matters of particular importance to JSI and its clients. JSI will continue to participate in the monumental task before the Commission to reform and repurpose the federal universal service programs as well as reform the current intercarrier compensation regime.

II. Goals and Priorities

A primary goal of the Commission is to promote private sector investment and create jobs associated with this investment. Private sector investment requires a stable and robust environment in which to invest. Without a stable environment, private sector investment will demand a high-risk premium in order to invest in rural areas of the nation — if at all. In order to provide a stable environment, regulators have used rate-of-return regulation as an effective vehicle to promote private sector investment in rural areas of the nation. The recognized existence of a rural-rural divide is *prima facie* evidence suggesting that rate-of-return regulation delivers the intended results while price-cap or incentive regulation fails to deliver in rural areas of the nation. Based on the Commission's Automated Reporting Management Information System ("ARMIS"), 2007 data show that many price-cap carrier study areas are realizing interstate returns in excess of 50 percent. These results are likely due to very low and declining net investment balances which are a symptom of a lack of investment in rural areas where investment needs are large and remain unfulfilled. The Commission's goal to modernize its universal service programs should begin with an examination of price-cap or incentive-based regulation before proposing to eliminate rate-of-return regulation — as is proposed in the NPRM.

Another goal or priority of the Commission is to use market-based incentives to deliver universal service support. JSI urges the Commission to <u>proceed with caution</u> in this effort. JSI believes the Commission will not attract enough bidders to a reverse auction for many rural areas. A primary objective of universal service is to enable rural and high-cost areas of the nation to enjoy comparable services at comparable rates to their urban counterparts. In developing an overall philosophy to deliver "the most bang for the buck," JSI fears the Commission is losing sight of the purpose of universal service. In using this theme to guide policy, the Commission is proposing to deliver support to the areas with the least cost-per-subscriber first. This, coupled with the Commission's self-imposed budget restriction, will leave the higher cost areas of the nation without support in the mid- to long-term. This result, JSI fears, is a departure from the goal of universal service established by Congress.

III. Near-Term Reforms for Federal Universal Service

A. Missing Near-Term Reform for High Cost Model Support

In Section VI of the NPRM, the Commission seeks comments on a number of near-term reforms associated with the current programs utilized by rural and rate-of-return carriers. These programs include High Cost Loop Support ("HCLS"), Local Switching Support ("LSS") and Interstate Common Line Support ("ICLS") as well as the Safety Net Additive ("SNA") and Safety Valve Support ("SVS") (both SNA and SVS are types of supplemental HCLS). In addition, the Commission seeks to repurpose Interstate Access Support ("IAS") received by price-cap carriers. Notably, while the Commission mentions the High Cost Model Support ("HCMS") program — with funds received by a limited set of the nation's non-rural carriers — it does not propose any near-term reforms of the HCMS. The observation of the Commission concerning HCLS; *e.g.*, the increased concentration of HCLS among recipients is a bad outcome, is more applicable to the HCMS program. While the Commission seeks no comments on the

HCMS programs, JSI respectfully suggests that the HCMS funds should be combined with the IAS funds in funding the new Connect America Fund ("CAF"). There is no justification provided in the NPRM to leave the HCMS immune to reform and repurposed support. Data from the Universal Service Administrative Company ("USAC") second quarter 2011 filing to the Commission shows that incumbent LECs in only two states are projected to receive an annualized $146 million in HCMS.[5] While the non-rural carriers in Wyoming and West Virginia are certainly grateful for HCMS, it is not clear why, when discussing the increased concentration of HCLS to fewer carriers over time, the FCC didn't explain why the poster child of concentrated support — the HCMS program — was immune to near-term reforms. It appears to JSI that in repurposing IAS, the Commission should repurpose HCMS as well. Alternatively, the Commission should require a demonstration of cost for non-rural carriers and a certification that HCMS is targeted to rural areas of these two states.[6]

B. Financial Impact of Proposed FCC Reforms

On March 28, 2011 JSI participated in an *ex parte* with members of the Wireline Competition Bureau and provided detailed information on 139 ILECs classified as cost study companies.[7] JSI examined the financial impact of four proposed near-term reforms: the removal of all corporate operations expense recovery in all universal service support programs; the reduction of the HCLS algorithm percentages (75 percent reduced to 65 percent, and 65 percent

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[5] Universal Service Administrative Company, Second Quarter 2011 Filing at the FCC, Appendix Tables HC16 and HC17 available at www.universalservice.org.

[6] While Wyoming is largely rural, it isn't clear why access lines in Cheyenne and Laramie, relatively large cities, receive support under the statewide HCMS algorithm.

[7] *See* John Staurulakis, Inc. Notice of *Ex Parte* Presentation, filed Mar. 29, 2011 in WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92 and CC Docket No. 96-45 ("JSI ex parte").

reduced to 55 percent);[8] the elimination of LSS; and, the elimination of SNA. The financial impact of the Commission's proposed near-term reforms portents severe financial impacts that are certain to have a negative impact on the preservation and advancement of universal service in areas served by rural ILECs. For example, the weighted average reduction in total federal universal service receipts is estimated to be 25 percent: The simple average across the 139 study areas is a reduction of 37 percent. The maximum decline is 94 percent of total federal universal service support revenues. As is shown by the data JSI has provided, the percentage decline of total federal universal service support revenues is dramatic.

When viewed as a percentage of total regulated revenues, the proposed reductions will have a negative impact on the preservation and advancement of universal service and will threaten the viability of certain rural ILEC operations. The weighted average percentage decline in total regulated revenues is eight percent: The simple average reduction across the 139 study areas is 12 percent. Sixteen carriers would have reductions in excess of 20 percent. Of the sixteen carriers, one faces a reduction of 36 percent. In one example, a study area projected to lose eight percent (the weighted average) in total revenues is projected to exceed its debt load level associated with its loans held by the government's Rural Utilities Service ("RUS") loan program and CoBank, a private lender. CoBank has formally explained these loan requirements in an *ex parte*.[9] If this experience is any guide, the proposed FCC near-term reforms for rural

[8] All 139 ILECs are under 200,000 loops. The data took into account the decrease that would occur in the National Average Cost Per Loop ("NACPL").

[9] *See* Letter from Sarah Tyree, Vice President, Government Affairs, CoBank to Marlene H Dortch, Secretary, FCC, CC Docket No. 96-45 (filed April 5, 2011) (explaining CoBank's approach to financing rural exchange carriers and that it "views elimination of rate-of-return regulation for our rural local exchange carrier customers as a serious threat to their ability to continue to obtain access to debt capital"). ("CoBank ex parte")

ILECs will create severe financial hardship for carriers and likely a majority of these carriers will be unable to maintain their loan covenants for loans taken for infrastructure investments under the existing rules and amortized into the future.

Placed in context of the purpose of universal service and the goals of the Commission, JSI reminds the Commission that these infrastructure investments made in the past (also known as “legacy investments”) are used for the provisioning of telecommunications and information services throughout rural ILEC service areas across the country. These investments are the types of investments required to deliver broadband services to these sparsely populated areas. The absence of a stable environment for the recovery of costs associated with these legacy investments will most certainly send a signal that high-cost areas of the nation are not going to receive the public support needed to spur private investment where is it not economically viable to deploy and/or operate broadband networks. JSI submits the effect of the proposed near-term reforms is opposite to the effect desired by the Commission in its reform and repurposing effort. Rural investments and associated jobs will become scarce at a time where both are desperately needed in rural areas of the nation.

JSI recommends the Commission reassess its commitment to the near-term reforms it proposed in the NPRM. In the sections that follow, JSI comments on various specific proposals and proposes alternatives intended to achieve the goals of the Commission without disrupting the fragile economic environment that exists in rural areas of nation.[10]

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[10] As described in Section II, *supra*, JSI is aware of the Commission’s rural-rural divide concern. However,

C. Elimination of Corporate Operations Expense Recovery

The Commission proposes to eliminate the eligibility of corporate operations expenses in the federal high-cost support programs. The Commission believes that the elimination is favored because it faces a budget limitation and wishes to "focus finite universal service funds more directly on investments in network build-out, maintenance, and upgrades."[11] JSI recommends the Commission reject this proposal. Corporate operations expenses are identified in Part 32 6720.[12] These expenses are incurred by rural ILECs for general and administrative operations. These operations include, *inter alia*, the formation of corporate policy, developing long-term planning, providing accounting services, maintaining relations with government regulators, performing personnel activities, planning and maintaining application systems and data bases for general purpose computers, procuring legal services, procuring materials and supplies and evaluating suppliers, investigating and researching for new knowledge and technology.[13] All of

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RBOCs do not have the incentive under price cap regulation to invest in their rural service areas—to the extent they have not sold these areas to other providers. The rural investment problem with price cap regulation in RBOC rural areas is not solved by imposing draconian near-term reforms on rural ILECs that are currently operating under rate-of-return regulation. To the extent the Commission wishes to eliminate rate-of-return regulation in favor of some type of incentive regulation, JSI believes that this will impair the highest cost areas of the nation to such extent that the benefits of incentive regulation will be far less than the cost of failing the purpose to preserve and advance universal service across the nation.

[11] NPRM at 198.

[12] 47 C.F.R. § 32.6720. This account includes the former account 32.6710 eliminated in the Commission's Accounting Order. *See 2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2; Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*; CC Docket Nos. 00-199, 97-212, 80-286, 99-301, Report and Order in CC Docket Nos. 00-199, 97-212, and 8-0-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, FCC 01-301 (rel. Nov. 5, 2001) (rule deleted in Final Rules - Appendix F)

[13] § 32.6720 General and administrative.

This account shall include costs incurred in the provision of general and administrative services as follows:

(a) Formulating corporate policy and in providing overall administration and management. Included are the pay, fees and expenses of boards of directors or similar policy boards and all board-designated officers of the company and their office staffs, e.g., secretaries and staff assistants.

(b) Developing and evaluating long-term courses of action for the future operations of the company. This includes performing corporate organization and integrated long-range planning, including management studies, options and contingency plans, and economic strategic analysis.

(c) Providing accounting and financial services. Accounting services include payroll and disbursements, property accounting, capital recovery, regulatory accounting (revenue requirements, separations, settlements and corollary cost accounting), non-customer billing, tax accounting, internal and external auditing, capital and operating budget analysis and control, and general accounting (accounting principles and procedures and journals, ledgers, and financial reports). Financial services include banking operations, cash management, benefit investment fund management (including actuarial services), securities management, debt trust administration, corporate financial planning and analysis, and internal cashier services.

(d) Maintaining relations with government, regulators, other companies and the general public. This includes:

(1) Reviewing existing or pending legislation (see also Account 7300, Nonoperating income and expense, for lobbying expenses);

(2) Preparing and presenting information for regulatory purposes, including tariff and service cost filings, and obtaining radio licenses and construction permits;

(3) Performing public relations and non-product-related corporate image advertising activities;

(4) Administering relations, including negotiating contracts, with telecommunications companies and other utilities, businesses, and industries. This excludes sales contracts (see also Account 6611, Product management and sales); and

(5) Administering investor relations.

(e) Performing personnel administration activities. This includes:

(1) Equal Employment Opportunity and Affirmative Action Programs;

(2) Employee data for forecasting, planning and reporting;

(3) General employment services;

(4) Occupational medical services;

(5) Job analysis and salary programs;

(6) Labor relations activities;

(7) Personnel development and staffing services, including counseling, career planning, promotion and transfer programs;

(8) Personnel policy development;

(9) Employee communications;

(10) Benefit administration;

(11) Employee activity programs;

(12) Employee safety programs; and

(13) Nontechnical training course development and presentation.

(f) Planning and maintaining application systems and databases for general purpose computers.

(g) Providing legal services: This includes conducting and coordinating litigation, providing guidance on regulatory and labor matters, preparing, reviewing and filing patents and contracts and interpreting legislation. Also included are court costs, filing fees, and the costs of outside counsel, depositions, transcripts and witnesses.

(h) Procuring material and supplies, including office supplies. This includes analyzing and evaluating suppliers' products, selecting appropriate suppliers, negotiating supply contracts, placing purchase orders, expediting and controlling orders placed for material, developing standards for material purchased and administering vendor or user claims.

(i) Making planned search or critical investigation aimed at discovery of new knowledge. It also includes translating research findings into a plan or design for a new product or process or for a significant improvement to an existing product or process, whether intended for sale or use. This excludes making routine alterations to existing products, processes, and other ongoing operations even though those alterations may represent improvements.

(j) Performing general administrative activities not directly charged to the user, and not provided in paragraphs (a) through (i) of this section. This includes providing general reference libraries, food services (e.g., cafeterias, lunch rooms and vending facilities), archives, general security investigation services, operating official private branch exchanges in the conduct of the business, and telecommunications and mail services. Also included are payments in settlement of accident and damage claims, insurance premiums for protection against losses and damages, direct benefit payments to or on behalf of retired and separated employees, accident and sickness disability payments, supplemental payments to employees while in governmental service, death payments, and other miscellaneous costs of a corporate nature. This account excludes the cost of office services, which are to be included these activities are central to the core mission of rural ILECs.

As the Commission is aware, corporate operations expenses are subject to a specific corporate operations cap under the HCLS algorithm. This means that currently, the HCLS imposes a cap on the amount of corporate operations expense that is eligible for federal support. The Commission is also aware that the HCLS algorithm does not provide complete recovery for corporate operations assigned to loop investments. The Commission conducted a proceeding to develop the current HCLS corporate operations expense cap and concluded that the current cap was reasonable. JSI recommends that to the extent the Commission wants to control or limit the amount of federal high-cost support that goes to these critical mission functions, it apply the current HCLS corporate operations expense cap algorithm to the LSS and ICLS programs. In taking this action, the Commission would be addressing its concern about focused support and would also be providing for recovery of some of the corporate operations expense assigned to Account 32.6720. The data contained in JSI's *ex parte* showed the impact associated with extending the existing corporate operation expense limitation to the LSS & ICLS algorithms to be a reduction in annual high-cost support of approximately $7 million.

D. Elimination of LSS

The Commission proposes to eliminate LSS.[14] Justification for this proposal is that the "LSS rule provides support without any high-cost qualifying threshold."[15] The LSS program is based on a Part 36 assignment of a weighing factor that assigns more switching costs to the

in the accounts appropriate for the activities supported. [67 Fed. Reg. 5696 (2002), as amended at 67 Fed. Reg. 20052 (2002), eff. Jan 1, 2003].

[14] NPRM at 186.

[15] *Id.* at 189.

interstate jurisdiction. The weighting factor is adjusted to reflect the fact that carriers with lower access lines must buy switching capacity in large increments — the investment is "lumpy," or a more technical description is that there is a stepwise cost associated with switching investment. The very construction of the Part 36 weighting assignment reflects this known cost principle. Thus, the claim that there is not a cost threshold for LSS is not accurate. The Commission should recognize that ILEC LSS has been decreasing over time as carriers have been able to realize cost savings when migrating to new switch platforms and as older plant has depreciated value. The companies reflected in the JSI *ex parte* show an aggregate accumulated depreciation reserve level for switching investment in excess of 80 percent. JSI recommends the Commission not eliminate the LSS program because it already has a high-cost qualifying threshold and continues to provide support for universal service, *i.e.*, switched voice service.

JSI notes that even if the Commission were to eliminate LSS, its proposed rules do not identify a change in Part 36 of the Code of Federal Regulations ("CFR"). Accordingly, the assignment of local switching costs to the interstate jurisdiction will remain while the distribution of support in Part 54 is removed. Absent the LSS program, rural ILECs will have to increase their local switching interstate access rate to recover these switching costs. According to the interstate minute of use data associated with the JSI *ex parte* carriers, this action will increase local switching rates by a weighted average of 1.27 cents per minute for the JSI group.[16] Alternatively, if the Commission were to make changes to Part 36 of its regulations, the switching costs currently assigned to the interstate jurisdiction would now be directed to the

[16] This switching rate would be tariffed by the NECA and so this amount is only an estimate based on the data available to JSI.

intrastate jurisdiction to be recovered, under rate-of-return regulation, from either an increase in intrastate local switching rates or local service rates. In either event, the Commission's proposed action will likely cause access rates to increase at a time when the proposal in the NPRM is to reduce these same rates. The obvious conclusion is to avoid changes to the LSS for rural ILECs.

Realizing some of the problems associated with the elimination of the LSS program, the Commission also proposed creating a hybrid program combining HCLS and LSS and using a hybrid HCLS algorithm. Presently, JSI cannot fathom how this would occur inasmuch as there is no national average switching cost, and JSI does not believe it furthers any universal service goal to create a hybrid program.

E. Elimination of the SNA

The Commission proposes the elimination of the SNA.[17] This proposal is motivated by the concern that the per-line threshold is not adequately targeting significant increases in total investment — as lines decline the per-line threshold is easier to reach with less significant investments.

JSI submits the solution to this per-line problem is trivial. Instead of eliminating the program that helps spur private investment in rural areas of the nation, the Commission should simply remove the per-line requirement. By making this change, a carrier would be eligible for SNA if its study area telecommunications plant in service ("TPIS") increases by at least 14 percent. This change appears reasonable and addresses a concern raised by the Commission.

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[17] NPRM at 185.

The second concern raised by the Commission in the NPRM is that the SNA has no incentives for rural ILECs to operate efficiently.[18] In this matter, JSI believes the Commission overstates its belief that carriers are inefficient. The current programs operate on the foundation that support is obtained to provide the intended services. If the Commission observes there are abuses to the federal universal service programs, then it should address these on a case-by-case basis.

F. Imposing a Limit on Total per Line High-Cost Support

The Commission proposes to establish a cap on total support per line for all companies operating in the continental United States.[19] JSI urges the Commission to reject this proposal — on its face it is arbitrary and contrary to the purposes of universal service. Imposing a cap on total support per line departs from the bedrock principle that federal universal service support should be intended to support networks in high cost areas. As unserved areas begin to be served, there will be occasions when the per-line amount is very large because these areas have high costs and few lines. JSI believes it is in the public interest to avoid a per-line cap and urges the Commission to not adopt this measure as part of its reforms.

G. Mandatory Disaggregation is Burdensome and Unnecessary

As part of its development of the CAF, the Commission proposes to require rural carriers to disaggregate support within existing study areas beginning in 2012.[20] JSI urges the Commission to reject this proposal. Mandatory disaggregation of rural study areas is extremely

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[18] *Id*. at 184.
[19] *Id*. at 208.
[20] *Id*. at 375.

burdensome and does not appear necessary to achieve the goals of universal service. The Commission supposes that disaggregation "should facilitate [its] ability to identify those areas most in need of ongoing support in the future."[21] As expressed by the Commission, it is uncertain whether disaggregation of rural carrier study areas will serve any ultimate universal service goal, or whether another approach could be used that is less burdensome. When balanced with the considerable burden cost disaggregation that will be borne by rural carriers, JSI submits that mandatory disaggregation is not appropriate for the near-term. As Competitive Eligible Telecommunications Carrier ("CETC") support is phased-out, disaggregation does not produce any lasting benefit.[22] In addition, the time and cost associated with completing disaggregation studies is extensive and premature given the fact that changes to the FCC's Part 36 rules associated with long-delayed separations reform may be forthcoming.

IV. Elimination of Rate-of-Return Regulation

Without belaboring the point, JSI wishes to state its observation that rate-of-return regulation is an effective vehicle to spur private investment in rural areas of the nation. If the Commission wants to evaluate the best way to deliver universal service to rural areas of the nation, it should not start with the premise that rate-of-return should be abandoned. The NPRM appears to make the conclusion that incentive-based regulation is best for areas served by rural ILECs without a full and complete investigation. The experience of the RBOCs' rural areas suggests, at least initially, that incentive based regulation has not delivered information services to rural areas. To the extent the Commission seeks to examine rate-of-return regulation options

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[21] *Id*.

[22] The Commission could phase-down CETC support through a streamlined approach that avoids the considerable burden and cost associated with rural carrier disaggregation.

for rural ILECs, it should examine the entire experience of regulation incentives in a further notice of proposed rulemaking or other venue.

V. Establishing a Reasonable and Equitable Transition Path

As the Commission seeks to reform and repurpose federal universal service support programs, JSI believes it is critical to establish a process whereby the legacy investments and associated financial obligations for these investments are allowed to unwind in a stable environment. Many of the proposed reforms are either immediate or are scheduled to occur within three years. Obviously, loan commitments for already installed investment will take longer than three years to conclude.

The Commission has a precedent in allowing for a transition period longer than three years. When the Commission reformed the non-rural programs in the late 1990s, it provided a hold-harmless mechanism that lasted for more than six years for some carriers. Since rural ILECs are even more enmeshed in the current programs than were the non-rural carriers, JSI recommends the Commission recognize a need for a transition period of suitable length to resolve legacy investments and their ongoing operational costs for these investments in rural ILEC areas.

JSI will not provide comments on the long-term reforms for federal universal service at this time because there is not a specific proposal offered by the Commission. JSI expects that during the course of this proceeding, specific proposals will be available and requests that the Commission make available opportunities to comment on specific proposals involving long-term universal service reform.

VI. Long-Term Intercarrier Compensation Reform

Similar to long-term universal service reform, precious little detail is offered concerning long-term intercarrier compensation ("ICC") reform. JSI makes several initial observations about long-term ICC reform.

First, JSI has serious reservations concerning the Commission's ability to preempt state regulatory authorities in the matter of intrastate access rate reform.[23] As such, we doubt the Commission will prevail in preempting the states on this matter. Before details are proposed, JSI believes the Commission should confirm its authority to wedge Section 251 into the longstanding practice of interstate and state separations.

Second, the proposal to possibly establish bill-and-keep as a solution to ICC needs to be tempered. Bill-and-keep arrangements are satisfactory when the two parties exchanging traffic has similar traffic flows and when the two parties have similar underlying terminating costs. Rural ILECs can experience long distances for the transport and termination of traffic received by an exchanging carrier. Before a bill-and-keep regime is established, these considerations should be recognized. Moreover, JSI submits that no long-term solution will work when users of rural ILEC network facilities are not required to compensate the network owner. Any long-term solution must adhere to the principle that network users should pay for the use of the network. Without this bedrock principle, JSI believes any long-term solution will be subject to arbitrage

[23] *See* NPRM at 515.

and will be unfair and unreasonable. JSI welcomes the opportunity to comment on more defined long-term proposals as they are presented by the Commission.

Finally, the Commission should provide for an adequate transition period for reform of existing per-minute of use rates and recovery of the associated displaced switched access revenue. Intrastate and interstate switched access revenues continue to be a significant source of cost recovery for rural carriers and the ability to recover any significant amount of displaced switched access revenue from increases in basic local service rates and/or subscriber line charges is limited. JSI recommends the Commission allow for the recovery of adequate amounts of lost switched access revenue from the Connect America Fund.

VII. Conclusion

JSI urges the Commission to refrain from certain specific near-term proposals intended to reform federal universal service. JSI also recommends certain proposals for the Commission's consideration when reforming and repurposing federal universal service support. As the Commission develops its reforms, JSI recommends the Commission to stay true to the ultimate purpose of universal service — to provide public support in high-cost areas of the nation to spur private investment. Many proposals identified by the Commission appear to distract the Commission from this primary objective and these proposals should be set aside in favor of others that enable the Commission to achieve its aim for federal universal service.

Respectfully submitted,

April 18, 2011

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