

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

In the Matter of

Modernizing the FCC Form 477 Data Program)	WC Docket No. 11-10
)	
Development of Nationwide Broadband Data to)	WC Docket No. 07-38
Evaluate Reasonable and Timely Deployment of)	
Advanced Services to All Americans, Improvement)	
of Wireless Broadband Subscribership Data, and)	
Development of Data on Interconnected Voice over)	
Internet Protocol (VoIP) Subscribership)	
)	
Service Quality, Customer Satisfaction,)	WC Docket No. 08-190
Infrastructure and Operating Data Gathering)	
)	
Review of Wireline Competition Bureau Data)	WC Docket No. 10-132
Practices)	

COMMENTS OF JOHN STAURULAKIS, INC.

March 30, 2011

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EXECUTIVE SUMMARY

In its Form 477 Notice of Proposed Rulemaking the Commission details its obligation to collect data to fulfill its statutory requirements. Additionally, the Commission has set a goal of both collecting all the data required to demonstrate that its policy goals are met and at the same time streamlining the process. JSI recommends the following to achieve these goals.

First, the Commission could reduce the frequency of reporting to coincide with Commission activities. Although many large carriers have mechanized systems that ease the burden of reporting, many of the small carriers do not. Reporting subscribership twice a year can be a burden for many carriers.

The Commission has also proposed that deployment data be included in the Form 477. JSI suggests that the Commission only require carriers to report deployment data every other year with an option to voluntarily report more often. Reporting on deployment is a new requirement for rural LECs and will be a significant burden until systems or processes are implemented to accurately report the information.

Second, the Commission should streamline the reporting process by limiting requests for carrier data to one collection in a consistent format.

Third, only the pricing for the basic benchmark broadband services are required for the Commission to ensure that rates are reasonable and comparable between urban and rural areas.

Fourth, service quality and customer satisfaction do not fall within the Commission's obligation of ensuring that urban and rural customers have access to services at reasonable comparable rates with the exception of speed requirements. If the Commission does require service quality and customer satisfaction information, it should be limited to information that supports development of public policy decisions, involves measurement of functions that are directly controlled by the carrier, and limited to data

that is readily available to the carrier and does not favor one technology or one carrier over another.

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COMMENTS OF JOHN STAURULAKIS, INC.

John Staurulakis, Inc. (“JSI”) files these comments in response to the Federal Communications Commission (“FCC” or “Commission”) Notice of Proposed Rulemaking released February 8, 2011 concerning data collection requirements.¹

JSI is a consulting firm offering regulatory, financial, and business development services to more than two hundred independent rate-of-return regulated incumbent local exchange carriers (“LECs”) throughout the United States. In addition to providing local exchange service, many of these LECs also provide other services, including long distance, broadband, wireless and video services, through separate divisions or affiliated

¹ *In the Matter of Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10; *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38; *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190; *Review of Wireline Competition Bureau Data Practices*, WC Docket No. 10-132, FCC 11-14 (rel. Feb. 8, 2011) (“Form 477 NPRM”).

companies. Among its consulting services, JSI assists these LECs with matters related to Commission reporting, intercarrier compensation, including preparing and submitting jurisdictional cost studies and universal service fund data to the National Exchange Carrier Association (“NECA”), negotiating interconnection and traffic exchange arrangements and preparing and filing tariffs with the Commission and state commissions. Accordingly, JSI is an interested party in this matter and offers the following comments.

I. INTRODUCTION

In the Form 477 NPRM the Commission details its obligation to collect data to fulfill its statutory requirements. Specifically the Commission outlines its obligations to ensure universal service, ensure public safety, promote telephone and broadband competition, and promote broadband deployment and availability. The Commission is under the obligation to ensure its policies are aligned with the principle that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas”.² Data collection should be limited to only that information that demonstrates that the policy goals of the Commission are met or to provide data for the development of new policies. The Commission must balance the need for data to meet its goals with the burden placed on carriers to produce the data, the Commission’s costs in collecting data and the highly sensitive nature of much of the information provided.

The Commission has set a goal of both collecting all the data required to demonstrate that its policy goals are met and at the same time streamlining the process. JSI recommends the following to achieve these goals.

² 47 U. S. C. at 264(b)(1),(3).

First, the Commission could reduce the frequency of reporting to coincide with Commission activities. Although many large carriers have mechanized systems that ease the burden of reporting, many of the small carriers do not. Reporting subscribership twice a year can be a burden for many carriers.

The Commission has also proposed that deployment data be included in the Form 477. JSI suggests that the Commission only require carriers to report deployment data every other year with an option to voluntarily report more often. Reporting on deployment is a new requirement for rural LECs and will be a significant burden until systems or processes are implemented to accurately report the information. Subscribership information may be gathered from billing records while deployment information is recorded in plant or network records. Many rural carriers maintain manual plant records that are not tied to a geographic map and do not have addresses. Converting to mechanized records or adding this information to manual records will be costly. Others have mechanized systems which do not have addresses, census block or census tract information. These carriers will be required to manually determine the location of their plant and the capabilities of each technology deployed. Some companies that do not have mechanized records have used subscription data to populate the Broadband Map instead of actual network deployment based on the time given to respond to data requests. It will take carriers time to gather accurate data in the required format for reporting. Accuracy of deployment data will not suffer significantly if data is collected every other year since deployment is done in incremental steps. If a carrier were making significant investments in plant, that carrier could voluntarily update information in off years.

Second, the Commission should streamline the reporting process by only requesting information from carriers once. For example, deployment information is collected for the NTIA National Broadband Map. The Commission could streamline reporting if this information was collected once in a consistent format that could meet the needs of both the Commission and NTIA. The Commission and NTIA should coordinate their requirements so carriers can develop a single system to report and establish a single definition of deployment. Consistency and experience should help improve the National

Broadband Map. Several carriers have found that their deployment information is not graphically shown on the map but may show up in the address list. Others have found that none of the information has shown on the National Broadband Map but that State Maps using the same submission do accurately show the deployment. We are hopeful these inaccuracies will improve over time.

Third, although service pricing is required for the Commission to ensure that rates are reasonable and comparable between urban and rural areas, there are many pitfalls in reporting pricing. The Commission has already required carriers to post their pricing on their websites in the Open Internet Order.³ Reference to the already posted rates will reduce the burden on carriers and increase the accuracy of the information since the posting will match the current prices offered by the carrier.

Fourth, service quality and customer satisfaction do not fall within the Commission's obligation of ensuring that urban and rural customers have access to services at reasonable comparable rates with the exception of speed requirements. If the Commission does require service quality and customer satisfaction information, it should be limited to information that supports development of public policy decisions, involves measurement of functions that are directly controlled by the carrier, and limited to data that is readily available to the carrier and does not favor one technology or one carrier over another.

II. DISCUSSION

A. Deployment Data

The Commission, for the first time since the inception of its Form 477 data gathering effort, is proposing to gather information on the capabilities of the facilities carriers have deployed in contrast with the subscription data that has been gathered to date. Until now,

³ In the Matter of Preserving the Open Internet Broadband Industry Practices, GN Docket No. 09-191 adopted December 21, 2010 ("Open Internet Order") at para. 56.

the Commission has relied on subscribership information as a proxy for actual deployment. JSI has found there is a significant difference between deployment and subscribership. The vast majority of our clients have DSL deployment in over 90 percent of their service territory, yet subscription may only be 25 percent. Focusing on subscription has under reported broadband availability in these areas. As shown by PEW data, broadband penetration is correlated to the end-users' rural/non-rural status and to income.⁴ The mean income levels in our clients' service territories are well below the national average thus impacting the overall subscribership. These price sensitive customers also purchase the lower tier broadband service even when higher speeds are available. In the FCC's latest Report to Congress under Section 706 of the Telecommunications Act of 1996 ("Section 706 Report"), much of the rural deployment of broadband was not identified since the actual subscription rate of customer fell below the 4 Mbps download and 768 Kbps upload benchmark. Most of actual DSL or Fiber-to-the-Home ("FTTH") plant used to serve the customers is capable of delivering a qualifying service but the customers have not yet subscribed, or have subscribed at the lower upload speed of 500 Kbps. JSI estimates that in the Section 706 Report, broadband deployment was under reported by at least 13,697,000 customers.⁵ Since, the Commission risks making policy decisions based upon this erroneous deployment information, it is important to track actual deployment of facilities in an effort to rectify this situation.

JSI applauds the Commission desire to track deployment information but points out that not all companies have the systems to easily track deployment. Unlike the cable television industry that has a history of tracking deployment in the form of households passed, the telephone industry historically did not have a deployment measure because deployment and subscribership were the same prior to competition. Incumbent LECs are required to serve 100 percent of their service territory due to state carrier-of-last-resort

⁴ PEW Internet Home Broadband 2010 August 11, 2010 at 8. Rural Penetration is 40% while non-rural is 70%. Penetration for households with incomes over \$75K with 1.9 times the penetration as households with income less than \$30K.

⁵ *Internet Access services: Status as of June 30, 2010*, Industry Analysis and Technology Division, Wireline Competition Bureau, March 2011 at Table 5. Using this table, JSI added the subscriptions of all customers with download speeds of between 3 Mbps and 6Mbps, 6 Mbps and 10 Mbps, and 10 Mbps and 25 Mbps and upload speeds between 200 kbps and 768 kbps and found the sum to be 13,697,000.

obligations—and historical subscribership was over 90 percent. With the advent of competition from wireless, cable TV companies, competitive LECs and others, incumbent LECs now serve only 67.8 percent⁶ of the wireline access lines and 24 percent of subscribers use wireless only voice service.⁷ The gap between subscribership and deployment could be as high as 50 percent for voice service.

Subscribership of broadband service has never been a good proxy for deployment. Even now only 66 percent of homes subscribe to broadband service.⁸ The 66 percent included subscribership from multiple carriers. Therefore, subscribership for any one carrier will be far less in an area with competition. Subscribership may show as little as 30 percent of the customers a carrier can actually serve. This gap in deployment and subscribership is further reinforced by customers stating that availability of service is not the primary reason why people do not subscribe to broadband.⁹ Tracking deployment will provide needed information to the Commission and other policy makers to make decisions about policies required to support broadband deployment and subscribership.

B. Deployment Measures Must Be Consistent Between Carriers and Technology

In order for the deployment information to be useful for policy development, the information must be consistent between the various technologies. There must be some consistency between mobile and fixed technologies and between technologies with dedicated bandwidth and those with shared bandwidth.

JSI recommends that deployment be measured on the same geographic level as the Connect America Fund (“CAF”). The current proposal in the USF-ICC Reform NPRM

⁶ Local Competition Report 2010, released 3-11-11 Table 1.

⁷ Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July–December 2009, released 5-12-2010 pg 1.

⁸ PEW Internet Home Broadband 2010 August 11, 2010 at 8 at 2.

⁹ *Id* at 11 “Just not interested, don’t have a computer, too expensive, too difficult/frustrating and think it’s a waste of time” precede access as a reason for not subscribing to broadband.

is on a census block basis.¹⁰ That plan will require specific information on the deployment of broadband to identify the unserved areas. The census block provides sufficient granularity to identify where facilities are located while still providing some security for the exact location of these facilities. In accord with the CAF recommendation, JSI submits that detailed deployment data should be collected in the year prior to the auctions. It is reasonable to collect this data on a census block level if the reporting requirement is limited to every other year.

Each technology type will need a standard of measure to validate the coverage of the census block. Wireline coverage might be based on the percentage of area covered, number of miles of cable, or the number of premises. Wireless coverage could be measured at the centroid of the block and some additional locations away from the centroid if the block covers a large area. If a block is over two square miles, a street address range could be used to identify areas of coverage for both wireline and wireless.¹¹ The exact measure used will need additional comment by the industry.

The definition of broadband will also need to be standardized. The same definition of broadband should be used for both subscribership and deployment. The definition should also be the same for all technologies. For example, wireless speeds should not be less than wireline speed. However, deployment does not have to be a black or white measurement. Broadband speeds will continue to increase over time. The Commission should collect deployment data on several speed ranges so the migration of deployment can be tracked. The speed range should be simplified to represent the total of the upload and download speeds instead of the current matrix of upload speeds and download speeds. For example, the Commission benchmark of 4 Mbps download and 768 kbps upload speeds would be combined to be 4.768 Mbps or rounded to 5 Mbps speed.

¹⁰ *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; Lifeline and Linkup*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Further Notice of Proposed Rulemaking, FCC 11-13 (adopted Feb. 8, 2011) (“USF-ICC Reform NRPM”) at para 293 and 294.

¹¹ Note that some rural communities do not have E911 implemented so standardized addresses are not available.

With the simplified speed ranges, the Commission can track the deployment as it is upgraded from the first speed range (200 Kbps) to the next range (5 Mbps). Higher speed ranges should also continue to be tracked. The Commission should limit the definition of new benchmarks to fall at the break point between the tracked speeds. For example, if the current break points for download speeds are 768 kbps, 1.5 Mbps, 3 Mbps, 6 Mbps, 10 Mbps, 25 Mbps and 100 Mbps, the next time the Commission selects a benchmark it should move to be above 6 Mbps, which sits at a break point. When the benchmark changes, all speed ranges should be tracked until the old definitions for deployment and penetration are not significant. The available speed ranges can be tracked as customers migrate from the primary deployment to an obsolete service over time. The total availability of broadband service should include all speed ranges and should always increase. If the Commission switched the definition of broadband to only cover the speeds above the benchmark, the result would be that broadband availability would decrease the year in which the definition changed. In reality, more subscribers have access to broadband service—not fewer. Availability of a slower service is much different than no availability at all. Subscribership can decrease but total deployment will not. By tracking each speed range of broadband, total availability of broadband would show the true overall change in service availability while letting policy makers continue to incent the industry to continually meet the latest benchmark.

Defining the speed capability of a technology is not as straight forward. Networks consist of several components that can affect the speed. One section of the network could have the capability of 100 Mbps while another portion has the capability of only 5 Mbps. Some portions of the network share bandwidth among multiple customers. Some networks can control how many customers share bandwidth while others cannot. The network speed should be defined as the slowest component in the customer's link which is controlled by the carrier. For example, rural LECs only control the data network from the DSL connection point to the Network Interface Device ("NID") at the end user customer premise. They do not control the middle mile transport or the Customer Premises Equipment ("CPE"). Some larger carriers control both the last mile and the

middle mile. Carriers cannot be responsible for portions of the network that they do not control. JSI suggests that the last mile and middle mile deployment speeds be reported separately since not all carriers provide both portions. Each carrier can then more easily report the actual capabilities of their network. For example, there may be a large amount of dedicated bandwidth in a FTTH last mile facility but shared bandwidth in the middle mile facility that will limit the bandwidth for all users. It will be much more accurate for a carrier to report the capabilities of the dedicated portion and shared portion of the plant separately. The engineering assumptions for each distinct portion of the plant can also be separately identified. The Commission would then be able to determine the specific portions of the network that require enhancement. Additional comment is required to set the engineering criteria to be used to calculate the speed on various network types. Speed per customer for shared spectrum in systems such as wireless and cable modems will need to be addressed along with shared feeder facilities in DSL plant.

C. Pricing Information

The Commission asks for comment on the collection of pricing information as part of the Form 477. The Commission could collect pricing information only if it is used solely for the purpose of determining whether rural consumers are paying affordable prices that are reasonably comparable to those in urban areas. The Commission should only collect information for the purpose of making policy decisions. The Commission will only need information on basic service tier pricing in order to make such a determination of whether the pricing is or is not comparable and affordable. All price tiers and optional services offered by a provider are not required to make such a determination.

The Commission should not collect pricing information for the purposes of providing the actual price of broadband service to allow consumers to compare service prices.¹² Providing information for consumer use exceeds the scope of the data effort. The collection of data for consumer purposes would be both burdensome and highly inaccurate since either the service description or the service price change often. The

¹² Form 477 NPRM pp 69.

Open Internet Order already requires companies to post their broadband rates on their websites to assist consumers in selecting carriers. This requirement should be sufficient for the purposes of disclosing pricing to consumers.

D. Subscription

The Commission should continue to collect subscription data to measure the effectiveness of the Commission policies that require affordable service for all consumers. The current Form 477 data has been effective in achieving that goal, but could be simplified.

The geographic basis used for collecting subscribership data should be the same for voice and data. Many carriers already offer both so using two different measures, often for the same customer, is burdensome. The Commission questions if that unit of measure should be at the zip code, census tract, census block or address level.¹³ JSI recommends that the subscribership continue to be collected at the census tract level for both voice and broadband. Although some carriers may find providing information at an address level is easier than mapping addresses to a census block, there is risk the information provided would violate privacy and security concerns of the subscribers. Both the carrier providing the data and the Commission would risk disclosing end-user personal and account information especially if files were lost due to a security breach. Limiting the distribution of individual address information provides more security to the individual end-user customer.

As stated in the above discussion on deployment, the speed ranges should be simplified to be the sum of the upload and download speeds. This simple change would reduce the options from 72 combinations to 10. This reduction would not disrupt the ability to make reasoned policy decisions.

¹³ Form 477 NPRM pp 81.

The speed ranges chosen for reporting subscription should be the same as those tracked for deployment. For continuity, the Commission should continue to track using the same ranges used for download speeds except now the speeds would represent the sum of the upload and download speeds. The break points between the speeds would remain at 768 kbps, 1.5 Mbps, 3 Mbps, 6 Mbps, 10 Mbps, 25 Mbps and 100 Mbps. The Commission may need to include additional higher speeds in the near future.

Currently, Form 477 subscription data is gathered twice per year. Reducing the reporting requirement to once per year would ease the burden of reporting by all carriers.

E. Service Quality and Customer Satisfaction

In the Form 477 NPRM, the FCC requests comment on whether and how service quality and customer satisfaction information should be collected from a larger universe of voice and broadband providers. Currently data collected is limited to carriers who transitioned from rate of return to price cap regulation to ensure the service quality did not deteriorate when the carrier was no longer under price regulation. At the time this requirement was imposed on these carriers, competition was not fully developed. Today, competition is widespread: 87.9 percent of the households have access to more than ten voice providers and only 0.4 percent have no access to non-LEC providers;¹⁴ 32 percent of wireline access lines are provided by non-ILEC carriers;¹⁵ and 24.5 percent of subscribers use wireless only for voice without any wireline service.¹⁶ There are only five percent of households that have only one broadband provider.¹⁷ Competition drives carriers to attract customers based on a combination of service and price. The vast majority of customers have a choice of carriers for their voice and data services. Often consumers choose a service with lower quality if the price and feature meet their needs. In the Open Internet Order, the Commission already requires carriers to provide information on network management practices, terms and conditions on the carrier's website and in the

¹⁴ Local Telephone Competition Report: Status as of June 30, 2010, released 3-11-11 Table 19.

¹⁵ Local Competition Report 2010, released 3-11-11 Table 1.

¹⁶ Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July–December 2009 Released 5-12-2010 pg 1.

¹⁷ State of the Internet Report 2010 Figure 3b.

carrier's promotional materials. The Commission has recognized that this real time disclosure directly to the consumer provides the information for end users to make informed purchase decisions.¹⁸

The Commission is in a better position than carriers are to conduct customer surveys in an efficient and unbiased manner. The Commission is more efficient because it can survey fewer customers with statistical accuracy as opposed to the total number of customers that would be surveyed by a multitude of individual carriers. In addition, the customer response can be swayed by the survey questions. Comparing different carrier response forms with different survey questions would be unreliable. The Commission can implement a single consistent survey. Rural carriers also do not perform formal customer satisfaction surveys on a regular basis, and when surveys are conducted they may not be statistically accurate. Requiring rural carriers to conduct such a survey would be burdensome. If customers are satisfied with their service they will continue to retain their current carrier; if they are not, they have the ability to change carriers. The Commission should allow the market to drive the service quality requirements for carriers and refrain from requiring federal reporting of service standards and customer satisfaction.

Service quality is also increasingly difficult to measure. The Form 477 NPRM asks if carriers should provide data regarding the number of trouble reports or complaints that customers make regarding network performance or degradation. However, much of the overall performance is linked with the customer's own CPE and software resulting in many customer complaints that are not even associated with the carrier network. Carriers are also moving to web-based interaction with customers. If a customer has a performance issue that is resolved electronically over the Web or the Web instructs that customer how to fix their problem (whether CPE or the network) it is unclear whether that be considered a trouble report or an outage.

¹⁸ Open Internet Order at 53 “disclosure ensures that end users can make informed choices regarding the purchase and use of broadband service, which promotes a more competitive market for broadband services and can thereby reduce broadband providers’ incentives and ability to violate open Internet principles”.

Expanding service quality measures to broadband is also problematic. Small carriers often do not have equipment that continually measures characteristics such as jitter, packet loss, or latency. Many are currently reviewing their practices in light of the requirements of the Open Internet Order. For many small carriers there is no business purpose for purchasing the equipment to manage the data traffic and to measure jitter and latency that would justify the cost for their customer base. These carriers do not discriminate between applications or content and do not need sophisticated equipment to fulfill this requirement.

Market drivers should drive the quality of the services offered by voice and broadband carriers. However, if the Commission decides to measure any service quality it should be guided by a set of principles. First, only data that will support development of public policy decisions should be gathered. Second, the service quality measures should be limited to the functions that are directly controlled by the carrier. Third, the data collected must be readily available to the carriers required to report the information. Fourth, the measure should be not favor one technology over another or one carrier over another.

F. Ownership and Contact Information

The Commission, for the first time, seeks to gather information on the actual deployment of network instead of relying on subscription data. Along with this deployment information, the ownership of the carrier could be useful for determining which carriers are receiving USF funds and the extent to which a single company has control over the nation's communications network. However, information on the actual brand names used or common marketing names do not appear to be relevant in developing broadband policy. The request for ownership information should be combined with the collection of the deployment data and collected every other year.

Finally, providing emergency contact information with Form 477 data would not provide any public benefit. The operations personnel that need to contact other carriers in an

emergency are not familiar with Form 477 reports, nor would personnel automatically look to a federally maintained database for contacts to resolve their network outage in an emergency situation. Operations personnel currently maintain their individual lists of contact personnel for the carriers and vendors they utilize to maintain their network. Carriers do exchange trading partner profiles with the contact and escalation personnel that are responsible for the interconnecting networks. These are the contacts that will provide the quick response required during an emergency.

III. CONCLUSION

The Commission does need to revise the data collection via the Form 477 to meet the changing communications environment. The Commission can obtain the required data while reducing the burden on reporting carriers by reducing the frequency of reporting and simplifying speed ranges required for broadband services.

The Commission is applauded for taking steps to request actual deployment data that will be more accurate than simply subscription data. This data should be collected to support the proposed CAF mechanism. The frequency and the geographic basis for reporting needs to be coordinated so rational decisions can be made on the CAF. Additional details on how to report the deployment and speeds available in the area will need to be developed with industry input. All technologies will need to have standards that allow a direct comparison of speed.

Finally, the Commission should only require reporting of information required to make policy decisions. Speed information and pricing on the benchmark broadband service will be required to ensure that customers in rural and urban areas have access to services at comparable rates. The Commission should resist requiring carriers to report information that is meant to support end user purchase decisions. Market factors will drive customers' purchase decisions. The Commission already has required carriers to disclose information directly to end users and thus has given customers the tools required

to make informed decisions. Information required, if any, on service standards and customer satisfaction should be structured to minimize the burden on carriers.

Respectfully submitted,

March 30, 2011

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/s/ Valerie Wimer

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