

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

In the Matter of)	
)	
Technology Transitions)	GN Docket No. 13-5
)	
AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition)	GN Docket No. 12-353
)	
Connect America Fund)	WC Docket No. 10-90
)	
Structure and Practices of the Video Relay Service Program)	CG Docket No. 10-51
)	
Telecommunications Relay Services And Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities)	CG Docket No. 03-123
)	
Numbering Policies for Modern Communications)	WC Docket No. 13-97
)	

COMMENTS OF JOHN STAURULAKIS, INC.

March 31, 2014

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EXECUTIVE SUMMARY

In these comments, John Staurulakis, Inc. (“JSI”) hereby provides recommendations on the Federal Communications Commission’s (“FCC” or “Commission”) intentions to conduct targeted funding experiments in both price cap and rate-of-return areas to bring advanced services to rural areas of the nation using next generation networks that are high-speed, scalable, IP-based and robust.

First, JSI recommends that the FCC establish a budget for the experiments of \$200 million based on the significant amount of letters received (over 1,000) and large demand for support that would encourage network investment. Committing \$200 million would go far to satisfy the demand, select a wide range of experiments, and allow the Commission to retain at least \$30 million unallocated in its reserve.

Second, JSI argues that the Commission’s precondition that the only areas eligible for funding should be those areas lacking broadband is too narrow and restrictive. The experiments should address how to future-proof wireline networks with fiber facilities in the delivery of broadband that is high-speed, scalable and robust.

Third, JSI addresses the issue of ETC designation and explains that the FCC’s proposed approach creates an unresolvable problem for state commissions.

Fourth, JSI recommends that RLEC applications be evaluated and qualifying applicants be awarded *prior to* applications from other providers, subject to a challenge process.

Finally, JSI comments on the selection criteria for the experiments, and makes several recommendations for evaluating applications based on robust, scalable networks.

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COMMENTS OF JOHN STAURULAKIS, INC.

I. INTRODUCTION AND SUMMARY

On January 31, 2014, the Federal Communications Commission (“FCC” or “Commission”) released an Order, Report and Order and Further Notice of Proposed Rulemaking (“FNPRM”) in the above captioned docket.¹ John Staurulakis, Inc. (“JSI”) welcomes the opportunity to address several of the issues discussed in the FNPRM and on which the FCC seeks comment.

¹ *Technology Transitions et al.*, GN Docket No. 13-5 *et al.*, 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, FCC 14-5, (rel. Jan. 31, 2014) (“FNPRM”).

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.

The Commission seeks comments on issues related to its proposal to conduct targeted experiments to bring advanced services to rural areas of the nation using next generation networks that are high-speed, scalable, IP-based and robust. 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 these targeted experiments will be performed. For certain issues addressed in the FNPRM, JSI respectfully offers these comments for the Commission’s consideration.

II. FUNDING AND BUDGET

The first issue raised in the FNPRM deals with how much federal support should be appropriated to these targeted experiments.

A. Conditions

It is a stated goal of the Commission to prefer experiments that explore the ability of wireless services to provide broadband to rural areas of the nation. A fundamental precondition to this goal is to recognize that robust wireless service in rural areas of the nation requires robust and scalable wireline fiber optic cable networks that provide critical network services to wireless providers. The Commission should not forget that in most rural areas of the nation, RLECs are the providers of these vital wireline network

services. Without RLEC networks ready and able to provide connectivity to wireless providers, the deployment of wireless services would be severely impeded.

Based on the many expressions of interest filed in this proceeding, there is a large demand for federal support that would encourage investment in rural areas of the nation where the case to provide service is not met using customary business metrics. In many instances the amount of investment is too large to justify providing services to remote populations—in many cases these populations cannot be served using wireless technology due to limiting technical constraints. This is a second condition about rural areas of the nation served by RLECs that should inform the Commission in its experiments.

B. Presumptions

In seeking comments, the Commission presumes that the overall budget for federal high-cost support is limited to \$4.5 billion annually. This funding limit was self-imposed and is based on a 2010 estimate of federal high-cost funding. In an effort to spur the development of high-speed, robust, scalable fiber networks in the nation, the Commission should not presume that a 2010 estimate is sufficient to satisfy the needs to migrate to IP technology and further deepen the use of fiber for wireline services and for wireline transport used in wireless services.

In the event that its targeted experiments are successful, the Commission should seek to expand the scope of funding for more experiment areas in rural areas of the nation. There are good public policy reasons for this expansion of support for rural areas that will be discussed below.

Another presumption related to the targeted rural broadband experiments is to use a limited amount of unallocated funds that have been collected and remain unused by the Commission. The Commission reports that the 1Q:2014 amount of unallocated funds in the reserve account is \$230 million.

C. Relevant Factors

The Commission questions whether it should use \$50 million or \$100 million or some other amount to fund the broadband experiments. JSI respectfully urges the Commission to commit no less than \$200 million of the current unallocated reserve for these experiments. Committing \$200 million to rural experiments would allow the Commission to retain at least \$30 million unallocated in its reserve account to address any unforeseen support needs within the quarter. The Commission adjusts the contribution factor quarterly so any shortfall in support can be addressed within one calendar quarter: hence there is no need to have such a large reserve of unallocated funds.

The Commission should commit no less than \$200 million to the experiments for a variety of reasons. First, there is considerable interest in participating in these experiments. Having this amount of funding committed to rural experiments will allow the Commission to broaden its experiments. Funding a broad selection of experiments will inform the Commission on relevant public policy. For example, the Commission has expressed that experiments in areas served by RLECs may inform the Commission how to reform longer-term high-cost universal service. Without ample experiments in rural areas served by RLECs, the Commission will not gather enough information to inform itself on the feasibility of long-term universal service reform.

Secondly, the Commission has a duty to take immediate action to accelerate deployment of broadband capabilities. This duty requires the Commission to devote all available resources to remedy the lack of broadband being deployed in a reasonable and timely fashion. Section 706 of the Telecommunications Act of 1996 mandates full-scale action by the Commission. Withholding any sizable portion of unallocated federal universal service support funds in the reserve account is a dereliction of the Commission's duty under Section 706.

Recently RUS Administrator John Padalino stated the obvious when he said: "Unused funding will not deliver broadband to the unserved and underserved areas nationwide." While he was speaking of unused RUS funds, the statement applies with equal force in this discussion. Money in the reserve account does not deliver broadband to rural areas of the nation when the Commission has demonstrated an unmet need. The Commission should use no less than \$200 million of the current reserve amount. Before the experiments are funded, the Commission should revisit the reserve account balance and set aside only 10 percent of the unallocated funds in the reserve account and commit the remaining 90 percent to rural broadband experiments.

Another consideration the Commission raises is how to address one-time or recurring support. JSI submits that the Commission should make sure it has sufficient funds committed to the selected applications to support their experiments over the carrier-selected timeframe. So, one-time support and ongoing support for the selected applications should not be specifically segregated into sub-accounts. It does not provide the Commission any additional flexibility to allocate separate funds for non-recurring and recurring projects. The only requirement the Commission should adopt is to retain the

total funding requirement for the selected experiments over the experiments' various time horizons in the reserve account as allocated funds.

The Commission seeks comment on whether there should be a set allocation of the support amount for price-cap areas and rate-of-return areas. JSI suggests that the Commission should have a set allocation for price-cap and rate-of-return areas. There are specific and distinct goals the Commission seeks in both areas—and experiments in both areas merit support. The Commission needs to have sufficient experience in both price-cap and rate-of-return areas in order to inform itself on various public policy goals. Based on the number of expressions of interest received by the Commission, JSI submits that the rate-of-return areas should receive no less than half of the support committed to these experiments. Splitting the support amount between price-cap and rate-of-return areas should provide the Commission with a robust sample of experiments to evaluate public policy and to further the deployment of broadband in all rural areas of the nation.

III. AREA FOR EXPERIMENTS

The Commission seeks comments on the question of whether the Connect America Model (“CAM”) could be helpful in identifying locations in high-cost Census Blocks where broadband doesn't exist. JSI submits several relevant factors addressing this issue.

A. Relevant Factors

The Commission's precondition that the only areas eligible for funding should be those areas lacking broadband is too narrow and restrictive. A goal of enmeshing a broadband network in rural areas also involves “future-proofing” these areas. To develop

a record that will inform the Commission on future long-term support in rural areas, the Commission should not limit the experiments to areas lacking broadband. As broadband evolves, the need to future-proof existing areas currently receiving a minimal broadband service over copper facilities is apparent. Many of these copper-based facilities are nearing their limit to deliver services and, as the Commission is aware, maintenance on copper facilities used to deliver broadband is far higher than maintenance on fiber facilities used to provide broadband services. Hence, some portion of the Commission's experiments should address how to future-proof wireline networks with fiber facilities in the delivery of broadband that is high-speed, scalable and robust.

The CAM used for price-cap carriers is not ready for use in rate-of-return areas. Little study has been performed to validate the geographic and cost inputs for rate-of-return carriers. The few results released show that the CAM currently is not equipped to address rate-of-return issues. This should come as no surprise since the work on the CAM has been focused on the price-cap areas and price-cap carriers. Since the CAM isn't ready for rate-of-return areas in terms of both the verification of geographic inputs and suitable rate-of-return cost inputs, the Commission should refrain from using the CAM to determine areas eligible for support.

IV. ETC DESIGNATION

The Commission has established a Hobson's choice for state commissions addressing eligible telecommunications carriers ("ETCs") in areas served by rural telephone companies that are largely rate-of-return carriers. JSI recommends the Commission revisit its assumptions to allow for satisfying Section 214(e) of the Communications Act of 1934, as amended ("Act").

A. Presumptions

The Commission supposes that awarding a provider ETC designation after being selected for an award is sufficient for both price-cap and rate-of-return areas. JSI submits that the Commission has overlooked a key aspect to ETC designation for areas served by rural telephone companies' areas and the approach proposed by the Commission creates an unresolvable problem for state commissions.

B. Relevant Factors

For areas served by non-rural telephone companies, Section 214 of the Act mandates that state commissions designate more than one ETC.² The requirement for areas served by rural telephone companies is not the same. In these areas, a state commission must find that it is in the public interest to designate a second carrier as an ETC. The Commission is aware of the threatened financial viability of broadband networks operated by rate-of-return carriers and supported through existing high-cost mechanisms.³ However, by awarding experiment support and then having the state commissions designate carriers as ETCs causes a conflict with the independent finding that a second ETC designation is in the public interest. No state commission will be able to judge fairly the public interest for an area when the full force of the FCC's selection

² 47 U.S.C. § 214(e)(2) (A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.)

³ FNPRM at 208.

has already been made. This is hardly fair for the state commissions and the Commission's approach appears to prejudge the public interest in favor of designating a second carrier as an ETC in an area served by rural telephone company.

Moreover, the designation of a carrier in a rural telephone company area must satisfy another provision of the Act that requires the area of designation to be the rural telephone company's study area unless and until the Commission and States determine otherwise.⁴ JSI is not aware of any Federal-State Joint Board referral from the Commission that requests its recommendation on changing this study area requirement for purposes of the Commission's rural broadband experiments. Until these provisions are satisfied, the Commission seemingly cannot select census blocks in a rural telephone company study area and then assume that designation by state commissions will be forthcoming.

Another relevant factor that should inform the Commission on ETC designations for targeted rural area experiments is the duration of the ETC designation. The proposed funding is limited to a certain time—either a one-time funding similar to a grant, or a multi-year disbursement not to exceed ten years. When a carrier is designated an ETC, this designation is not subject to sunset. In fact the Act has addressed how an ETC may relinquish designation and this process is not straightforward.⁵ It is not clear from the

⁴ 47 U.S.C. § 214(e)(5). (The term “service area” means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, “service area” means such company's “study area” unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this title, establish a different definition of service area for such company.)

⁵ 47 U.S.C. § 214(e)(4). (A State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier

FNPRM whether a carrier designated an ETC for purposes of the rural broadband experiment is able to relinquish designation after receiving federal support for the ten-year maximum duration of the experiment in a process other than what is required by the Act. If this is the case, then the “experiment” is longer lasting than what the word generally implies.

V. RATE-OF-RETURN CONSIDERATIONS

The Commission seeks comments on the National Telecommunications Cooperative Association’s (“NTCA’s”) suggestion that the Commission provide RLECs an initial window to submit applications for consideration, in advance of soliciting applications from other parties, and also should allow the RLECs to undertake the same deployment proposed by the non-incumbent for the same or a less amount of support.⁶

A. Relevant Factors

JSI agrees in part with NTCA’s suggestion but is deeply concerned about how the Commission will implement these suggestions. Given the serious difficulty the carriers will have in getting ETC designation in areas served by rural telephone companies, JSI

designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall establish a time, not to exceed one year after the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.)

⁶ FNPRM at 207.

submits it is obvious that rural telephone companies should be given first priority for rural experiments in their areas. Experiment applications from RLECs should be evaluated and qualifying applications should be awarded prior to seeking applications from other providers—of course a challenge process for these awarded experiments would apply. Only after the RLEC round of applications is exhausted should the Commission entertain experiments from non-incumbents.

Once the incumbent round of experiments is complete, the Commission could then open rural areas served by rural telephone companies to applications from non-incumbents and then wade through the morass of dealing with state ETC designations described above. Granting an RLEC the opportunity to serve an area at or lower than the cost of the non-incumbent applicant is not necessary once the RLEC has been given the opportunity to have its application reviewed by the Commission.

If the Commission wanted to have RLECs be able to respond to a competitor's bid, the incumbent should be allowed to submit an experiment application that meets or exceeds the metrics of the non-incumbent experiment at a price that meets or exceeds the non-incumbent awarded price. The Commission could then evaluate and compare the competitor experiment with the incumbent experiment based on network value and other quality metrics as well as cost.

VI. SELECTION CRITERIA

The Commission seeks comments on various selective criteria for rural broadband experiments. JSI offers the following relevant factors that are offered to help inform the Commission's decision on how to select applications for targeted rural experiments.

A. Relevant Factors

The Commission should not adopt its proposal that cost effectiveness be the primary criteria in evaluating which applications to select for the experiment. Furthermore, using the CAM results for rural rate-of-return carrier areas is simply inapposite for the various reasons discussed earlier.

JSI agrees with the Commission's second potential selective criteria. This involves evaluating applications based on robust, scalable networks. The Commission should place great weight on the ability of networks in rural areas to be future-proof. As the Commission has demonstrated in its various annual reports to Congress, the needs of citizens for higher broadband speeds increases over time. Thus, any speed benchmark that the Commission sets today will be quickly replaced with a higher speed benchmark in the near future. Rural networks should be supported in order to prevent obsolescence. Rural networks should be supported in order to provide long-term broadband capacity to customers. In order to score the applications, the Commission should give greater weight to networks that are robust, capable of ultra-high-speed and scalable. Greater consideration should be given to applicants who propose to offer ultra-high-speed broadband services. These networks will naturally address the demands of anchor institutions and government activities (including education) that necessarily require or will require ultra-high-speed broadband services in the future. And networks that provide ultra-high-speed broadband in select areas will naturally evolve to provide these increased broadband speeds to all customers connected to the network.

VII. CONCLUSION

JSI provides suggestions to the Commission on a number of issues related to rural broadband experiments. JSI's comments are intended to help inform the Commission on critical issues related to experiments in rate-of-return/rural telephone company areas.

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

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