

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

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90
)

ORDER

Adopted: December 14, 2015

Released: December 14, 2015

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On July 29, 2015, the Wireline Competition Bureau (Bureau) published a preliminary list of 15 rate-of-return carrier study areas subject to a 100 percent overlap by an unsubsidized competitor or combination of unsubsidized competitors.¹ The Bureau based this preliminary determination on the methodology adopted in that *Public Notice*. At that time, the Bureau announced it would publish a final determination of 100 percent overlapped study areas based on the record filed in response to the *Public Notice*.² With this Order, we make our final determination and find that one study area included in the preliminary determination, Pineville Telephone Company (Pineville), is subject to a 100 percent overlap by an unsubsidized competitor. Pursuant to section 54.319 of the Commission’s rules, support payments for Pineville shall be phased down over a two-year period, commencing in January 2016.

II. BACKGROUND

2. In the 2011 *USF/ICC Transformation Order*, the Federal Communications Commission (Commission) adopted a rule to eliminate high-cost universal service support in incumbent local exchange carrier (ILEC) study areas where an unsubsidized competitor or a combination of unsubsidized competitors offers voice and broadband services that meet the Commission’s service obligations throughout the study area.³ At that time, the Commission sought comment on a proposed methodology for determining whether a study area is 100 percent overlapped and directed the Bureau to publish a final methodology.⁴ Subsequently, in December 2014, the Commission directed the Bureau to “publish its

¹ *Wireline Competition Bureau Publishes Preliminary Determination of Rate-of-Return Study Areas 100 Percent Overlapped by Unsubsidized Competitors*, WC Docket No. 10-90, Public Notice, 30 FCC Rcd 8179 (WCB 2015) (*Public Notice*).

² *Id.*

³ *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order et al., 26 FCC Rcd 17663, 17766-68, paras. 280-84 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). It defined an unsubsidized competitor as “a facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support.” *Id.* at 17701-02, paras. 103-104. *See also* 47 C.F.R. §54.5.

⁴ *Id.* at 17768, para. 284. The Commission subsequently codified the 100 percent overlap rule in April 2014. *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051 (2014); 47 C.F.R. § 54.319.

preliminary determination of those areas subject to 100 percent overlap and then provide an opportunity for comment on those preliminary determinations.”⁵

3. In July 2015, the Bureau adopted Form 477 deployment data as its data source for the preliminary determination and a final methodology for determining which rate-of-return study areas are subject to a 100 percent overlap. We published a preliminary list, shown below, of such study areas based on that methodology.⁶ In addition, we published an online map that provides a geographical depiction of the results of the preliminary analysis.⁷

Preliminary Determination of Rate-of-Return Study Areas Subject to a 100 Percent Overlap by an Unsubsidized Competitor or Combination of Unsubsidized Competitors			
SAC	State	Study Area	Competitive Provider(s)
100020	ME	PINE TREE TEL & TEL	Time Warner, Comcast
160135	NJ	WARWICK VALLEY-NJ	Service Electric Cable, CSC Holdings
170175	PA	IRONTON TEL CO	Service Electric Cable, RCN
210330	FL	SMART CITY TEL LLC	Orlando Telephone, Brevard Wireless, Bright House, Comcast
230494	NC	PINEVILLE TEL CO	Time Warner
310737	MI	WINN TEL CO	CMSInter.Net
310777	MI	ACE TELEPHONE CO. OF MI, INC. (OLD MISSION)	COLI, Cherry Capital Connection
320790	IN	MONON TEL CO	Comcast, TRANSWORLD
330896	WI	LAKEFIELD TEL CO	Mercury Network, Time Warner, Comcast
411791	KS	LA HARPE TEL CO INC	JMZ, Cox
452200	AZ	FORT MOJAVE TEL, INC	TRANSWORLD, Suddenlink
462178	CO	AGATE MUTUAL TEL CO	Kellin
532373	OR	GERVAIS TELEPHONE CO	McMinnville Access, WaveDivision
532386	OR	MT. ANGEL TEL CO.	McMinnville Access, WaveDivision
532396	OR	ST PAUL COOP ASSN	McMinnville Access, DataVision

4. The Bureau invited comment on this preliminary determination from both ILECs and unsubsidized competitors.⁸ In particular, the Bureau encouraged competitors to address in their comments whether they offer, to all locations within the census blocks reported on Form 477 and which overlap the incumbent’s study area, the following: (1) fixed voice service at rates under the 2015 reasonable comparability benchmark of \$47.48 and (2) fixed broadband service at an actual downstream speed of at least 10 Mbps and an actual upload speed of at least 1 Mbps; with latency suitable for real time applications, including Voice over Internet Protocol; with usage capacity that is reasonably comparable to offerings in urban areas; and at rates that are reasonably comparable to those in urban

⁵ *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15685, para. 116 (2014) (*December 2014 Connect America Fund Order*).

⁶ *Public Notice*, 30 FCC Rcd at 8181-85. We also provided a list of study areas with competitive overlaps between 99 and 100 percent based on the preliminary analysis and sought comment on whether any should be 100 percent overlapped. *Id.* at 8185. *See also infra* para. 6.

⁷ *See* FCC, 100% Overlap Map (July 29, 2015), <https://www.fcc.gov/maps/100pct-overlap-map>.

⁸ *Public Notice*, 30 FCC Rcd at 8186-88.

areas.⁹ We invited commenters to address whether the provider has voice and broadband-capable physical assets in or adjacent to the relevant area, holds itself out to the public as offering service, and is willing and able to provide service to a requesting customer within seven to ten business days without an extraordinary commitment of resources.¹⁰ We indicated that we would treat a declaration by a competitor that it is offering service as specified above throughout the blocks reported on Form 477 and within the study area as persuasive evidence that we would consider in our final determination.¹¹ We also stated that, absent such a submission from a competitor, we would not be in a position to make a final 100 percent overlap determination for the affected rate-of-return carrier because we would not know whether all locations in the study area in fact are served.¹² In addition, the Bureau invited rate-of-return carriers identified on the preliminary list of 100 percent overlapped study areas to submit evidence that an unsubsidized competitor does not offer service to all locations in the census blocks identified in the *Public Notice*.¹³ Seven of the 19 competitors and 12 of the 15 ILECs listed in the table above filed comments in response to the *Public Notice*.

III. DISCUSSION

5. Based on the information received in response to the preliminary determination, we find one study area, Pineville Telephone Company (SAC 230494) (Pineville study area), to be 100 percent overlapped. As discussed below, competitors did not submit sufficient evidence to find the additional study areas listed in the preliminary determination to be 100 percent overlapped. Furthermore, competitors did not submit sufficient evidence to find the study areas with an overlap between 99 and 100 percent in the preliminary determination to be 100 percent overlapped.¹⁴

A. Pineville Study Area

6. In our preliminary analysis of the Pineville study area, we found that Time Warner provides service in all of the census blocks with housing units in the study area based on Form 477 deployment data as of December 31, 2014.¹⁵ In response to the *Public Notice*, Time Warner submitted a certification that it serves all of the locations in those census blocks with both fixed voice and broadband service.¹⁶ Time Warner further stated that: its fixed voice service is offered at rates under the 2015 reasonable comparability benchmark of \$47.48; the actual speeds of its fixed broadband service are at least 10 Mbps downstream and 1 Mbps upstream; the latency of its broadband service is suitable for real time applications, including Voice over Internet Protocol; and the usage capacity and rates of its broadband service are reasonably comparable to offerings in urban areas.¹⁷

7. Pineville did not submit any filings in response to the *Public Notice*. Given the submission by Time Warner and the lack of any countervailing evidence, we make a final determination that the Pineville study area is 100 percent overlapped. Pursuant to the Commission's rule, the high-cost

⁹ *Id.* at 8186-87.

¹⁰ *Id.* at 8187.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 8187-88.

¹⁴ See *Public Notice*, 30 FCC Rcd at 8185 (listing study areas with an overlap between 99 and 100 percent).

¹⁵ *Id.* at 8185.

¹⁶ Time Warner Cable Inc. Comments at 2, Attach. 3 (Certification of Patricia McCausland) (Aug. 28, 2015)

¹⁷ *Id.*

universal service support for the Pineville study area is frozen at the amount disbursed in 2014, and the support will be phased down over the next two years.¹⁸

B. LaHarpe Study Area

8. In its preliminary analysis of the LaHarpe Telephone Company Inc. (SAC 411791) study area (La Harpe study area), the Bureau found that two unsubsidized competitors, Cox and JMZ Corporation (JMZ), provide service in the census blocks with housing units in the LaHarpe study area.¹⁹ Based on the Form 477 deployment data as of December 31, 2014, Cox offers service in one of such blocks while JMZ offers service in all. Cox did not submit comments in response to the *Public Notice* and therefore was not considered in the analysis for the final determination. JMZ, however, submitted a declaration that it makes service available to all of the locations in those census blocks with both fixed voice and broadband service using its fixed wireless technology.²⁰ JMZ further stated that its fixed voice service is offered at rates under the 2015 reasonable comparability benchmark of \$47.48; that the actual speeds of its fixed broadband service are at least 10 Mbps downstream and 1 Mbps upstream; that the latency of its broadband service is suitable for real time applications, including Voice over Internet Protocol; and that the usage capacity and rates of its broadband service are reasonably comparable to offerings in urban areas.²¹

9. LaHarpe submitted evidence in its comments that JMZ does not serve all of the locations in the relevant blocks of the LaHarpe study area.²² This evidence included maps of JMZ's fixed wireless coverage areas from its website, the results of field tests of JMZ's network showing its signal strength at certain locations in LaHarpe's study area was insufficient for providing broadband service, and statements by consumers in the study area that their service from JMZ had been unreliable and significantly slower than advertised.²³ JMZ filed a letter disputing the assumptions in LaHarpe's engineering field tests,²⁴ and LaHarpe subsequently submitted a response to that letter.²⁵ Weighing all of the evidence before us, we

¹⁸ Under the Commission's rules, the Pineville study area will receive two-thirds of the frozen baseline amount in 2016, and one-third of the frozen baseline amount in 2017. 47 C.F.R. § 54.319; *see also December 2014 Connect America Fund Order*, 29 FCC Rcd at 15685, para. 116 (adopting proposal to make "the baseline for support reductions to be the amount of support received in the immediately preceding year before a determination is made that there is a 100 percent overlap."). When the Commission adopted the rule in 2011, it concluded that support would be frozen based on the prior calendar year amounts, i.e. the sum of the 2010 legacy support mechanisms that pre-dated the changes adopted in the *USF/ICC Transformation Order*, *USF/ICC Transformation Order*, 26 FCC Rcd at 17766-68, paras. 280-84. The phase-down thus does not apply to CAF-ICC.

¹⁹ *Public Notice*, 30 FCC Rcd at 8181-85. Form 477, upon which the preliminary analysis was based, directs providers to include in their Fixed Broadband Deployment data census blocks in which they make service available to end-user premises. Providers should consider fixed broadband service to be "available in a census block if the provider does, or could, within a service interval that is typical for that type of connection—that is, without an extraordinary commitment of resources—provision two-way data transmission to and from the Internet with advertised speeds exceeding 200 kbps in at least one direction to end-user premises in the census block." *See* FCC Form 477 Instructions at 17 (June 30, 2015), <https://transition.fcc.gov/form477/477inst.pdf>.

²⁰ JMZ Corporation Comments at Attach. 1 (Declaration of Zachery Peres) (Aug. 28, 2015).

²¹ *Id.*

²² LaHarpe Telephone Company Comments (Aug. 28, 2015) (LaHarpe Comments); LaHarpe Telephone Company Reply (Sept. 28, 2015) (LaHarpe Reply).

²³ LaHarpe Comments at Attach. 1 (Monte R. Lee and Company Methodology statement); LaHarpe Reply at Attach. B (JMZ dba Kwikom Website Screen Capture Analysis), Attach. C (Field Test Results September 8, 2015), Attach. D (Field Test Results September 22-23, 2015), and Attach. E.

²⁴ Letter from Stephen E. Coran, Counsel to JMZ Corporation dba KwiKom Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 23, 2015) (JMZ Letter).

²⁵ Response of LaHarpe Telephone Company, Inc. to JMZ Letter, WC Docket No. 10-90 (Dec. 4, 2015).

cannot conclude that JMZ is meeting the Commission's minimum standards for service to all locations and find that the LaHarpe study area is not 100 percent overlapped. In particular, we are persuaded that JMZ has failed to establish that it is willing and able to provide service to all requesting locations within seven to ten business days.²⁶ Moreover, we place weight on LaHarpe's assertion that JMZ's online service availability map showed areas where service was not available in early August, with the map then modified shortly after JMZ's initial comments were submitted to show a greater area of service availability, albeit with some area still shown as not served.²⁷ Consistent with precedent,²⁸ we find that JMZ is not holding itself out as offering service to 100 percent of the residential and business locations in the study area.

C. Fort Mojave Study Area

10. After the release of the Public Notice, Fort Mojave Telecommunications, Inc. (Fort Mojave) submitted a revised map of its study area boundary (SAC 452200).²⁹ The new boundary included portions of California and Nevada that had not been included in its original study area boundary submission, which only included portions of Arizona. Our analysis of the revised study area boundary found that the Fort Mojave study area was no longer 100 percent overlapped by an unsubsidized competitor or combination of unsubsidized competitors. As a result, we find that the Fort Mojave study is not 100 percent overlapped.

D. Other Study Areas

11. Regarding the 12 remaining study areas listed as 100 percent overlapped in the preliminary analysis, the unsubsidized competitors serving those study areas did not submit sufficient evidence for us to conclude that those study areas should be classified as 100 percent overlapped. For instance, some of the competitors listed in the table above did not submit any comments in response to the *Public Notice*. These companies include Service Electric Cable, Orlando Telephone, Brevard Wireless, CMSInter.Net, COLI, Cherry Capital Connection, TRANSWORLD, Mercury Network, Kellin, and DataVision. Further, other parties that did file comments stated that they could not claim to serve *all* of the locations in the relevant blocks or stated definitively that they do *not* serve all of the locations in the relevant blocks.³⁰ In addition, in the three study areas served by McMinnville Access, the ILEC

²⁶ *Id.* at Exh. A (letter from consumer who called JMZ to inquire about service and was told the company was "90% sure" that service could be provided at her location); LaHarpe Reply at Attach. A (statement by JMZ on its Facebook page that "service is not always available at every location").

²⁷ LaHarpe Reply at 2-4 and Attach. B (JMZ dba Kwikom Website Screen Capture Analysis).

²⁸ *Connect America Fund*, WC Docket No. 10-90, Order, 29 FCC Rcd 181, 198, para. 81 (WCB 2014) (concluding that when an online service availability tool indicates service is not available, a block should be treated as unserved by an unsubsidized competitor; a consumer living in the area would likely conclude that service is not offered after visiting the competitor's website).

²⁹ Letter from Linda Gutierrez, General Manager, Fort Mojave Telecommunications, Inc. to Marlene H Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed Aug. 26, 2015). Fort Mojave also submitted and certified an updated study area boundary shapefile through the Commission's Study Area Boundary Data Collection interface at Study Area Boundary Data Collection, <https://sab.fcc.gov/ilec/login/> (last visited Dec. 9, 2015). We expect ILECs to file accurate study area boundaries, and those boundaries must be certified by a company official in accordance with the study area boundary orders. See *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report and Order, 27 FCC Rcd 13528 (WCB 2012); *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Order on Reconsideration, 28 FCC Rcd 1489 (WCB 2013).

³⁰ See Letter from Mary McManus, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 at 1 (filed Aug. 28, 2015); Cablevision Systems Corporation Comments at n. 3 (Aug. 28, 2015); Letter from Connie Wightman, Consultant, RCN Telecom Services, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 at 1 (filed Aug. 26, 2015).

submitted a declaration by McMinnville that McMinnville does not serve all locations in the blocks that it serves.³¹

12. Bright House Networks submitted comments stating that it serves all of the locations in the blocks that it serves in the Smart City Telecom study area (SAC 210330) with fixed voice and broadband services that meet the criteria listed above.³² WaveDivision did the same for the Gervais Telephone Co. (SAC 532373) and Mt. Angel Telephone Co. (SAC 532386) study areas.³³ However, Bright House Networks does not offer service in *all* of the census blocks with housing units in SAC 210330, and WaveDivision does not offer service in *all* of the census blocks with housing units in SACs 532373 and SAC 532386. The other competitors in these study areas either did not submit comments or did not claim to offer service to all of the locations in the blocks that they serve. Therefore, we are not able find that these study areas are 100 percent overlapped in our final determination.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-205, 254, and 303(r), sections 0.91, 0.201(d), 0.291, 1.108, 1.427 and 54.319 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.201(d), 0.291, 1.427, 54.319 and the delegations of authority in paragraphs 157, 184, 187, 192, 217 of the *USF/ICC Transformation Order*, FCC 11-161, that this Order IS ADOPTED and that the Universal Service Administrative Company SHALL REDUCE AND THEN TERMINATE payments to Pineville Telephone Company as specified herein.

14. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Matthew DelNero
Chief
Wireline Competition Bureau

³¹ Gervais Telephone Company, Monitor Cooperative Telephone Company, Mt. Angel Telephone Company and St. Paul Cooperative Telephone Association Comments at Exh. 1 (Aug. 28, 2015). We note that this result is not inconsistent with the certification made by McMinnville Access in filing its Form 477 deployment data. In certifying as to the truth and accuracy of that submission to the Commission, a filer is indicating that it has deployed service at the requisite speed in the census block; it is not certifying as to deployment throughout the census block.

³² Bright House Networks, LLC Comments at 2 (Aug. 28, 2015).

³³ WaveDivision Holdings, LLC Comments at 2 (Aug. 28, 2015).