

DAPHNE HUANG
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0318
IDAHO BAR NO. 8370

RECEIVED
2015 FEB -3 PM 2:11
IDAHO PUBLIC
UTILITIES COMMISSION

Street Address for Express Mail:
472 W. WASHINGTON
BOISE, IDAHO 83702-5918

Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF FIRST STEP INTERNET,)	
LLC'S APPLICATION FOR CONDITIONAL)	CASE NO. FSI-T-14-01
DESIGNATION AS AN ELIGIBLE)	
TELECOMMUNICATIONS CARRIER FOR)	COMMENTS OF THE
PURPOSES OF PARTICIPATING IN THE)	COMMISSION STAFF
FEDERAL COMMUNICATIONS)	
COMMISSION'S RURAL BROADBAND)	
EXPERIMENTS.)	

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Daphne Huang, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 33211, submits the following comments.

BACKGROUND

On December 22, 2014, First Step Internet, LLC ("First Step" or "Company") applied to the Commission for a conditional Order designating it as an eligible telecommunications carrier (ETC) in the State of Idaho so it can participate in the Federal Communications Commission's (FCC) Rural Broadband Experiments (RBE).

Overview of the Rural Broadband Experiments

In the *USF/ICC Transformation Order*, the FCC comprehensively reformed and modernized the high-cost program within the universal fund and the intercarrier compensation

system to focus support on networks capable of providing voice and broadband services.¹ The FCC created the Connect America Fund (CAM) and established a budget for the high-cost program.² The FCC provided for up to \$1.8 billion of the Connect America budget to be spent annually to make the broadband-capable infrastructure available to as many unserved locations as possible within the areas served by price cap carriers, while sustaining voice and broadband-capable infrastructure in high-cost areas that would not be served without this support.³

In subsequent Orders, the FCC adopted revisions to the CAM. CAM Phase II revised the minimum speed requirement for broadband speeds and made changes to the term of support, deployment milestones, and served location requirements among other revisions.⁴

In the January 2014 *Tech Transition Order*, the FCC adopted a framework for experiments to be conducted in price cap territories with the expectation that funding would not exceed the amount of model-calculated support associated with the relevant geographic area.⁵

In July 2014, the FCC took further steps to implement the Connect America Fund by adopting a \$100 million budget for rural broadband experiments in price cap areas, and the FCC opened a formal application process for companies to seek this federal support.⁶ The RBE is intended to bring “robust, scalable broadband networks” to rural communities unserved by “an unsubsidized competitor that offers voice and Internet access delivering at least 3 Mbps downstream/768 kbps upstream.”⁷

On December 5, 2014, the FCC announced the provisionally-selected bidders to participate in the RBE and these bidders are now required to submit additional information demonstrating their financial and technical qualifications. Among the provisionally-selected bidders are “12 entities seeking support to build networks capable of delivering 10 Mbps

¹ *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd 17663, FCC 11-161, released on November 18, 2011.

² *Id.* at 17710, para. 123.

³ *Id.* at 17725, para. 158.

⁴ See *Connect America Fund et al.*; WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and FNPRM*) *aff’d sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). Earlier this year, we adopted rules that built on the framework established by the Commission in the *USF/ICC Transformation Order*, and proposed targeted adjustments necessary to ensure that the Commission best utilize the funds that consumers and businesses pay into the universal service system. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al; 29 FCC rcd 7051 (2014) (*April Connect America Order and FNPRM*).

⁵ *Tech Transition Order*, FCC 14-5, released January 31, 2014.

⁶ See *Connect America Fund; ETC Annual Reports and Certification*, WC Docket Nos. 10-90, 14-58, RFNPR, 29 FCC rcd 8768 (2014) (*Rural Broadband Experiments Order*).

⁷ Application at 1 (quoting *Connect America Fund ETC Annual Reports and Certifications, Report and Order and Further Notice of Proposed Rulemaking*, 29 F.C.C.R. 8,769 at ¶ 7 (2014)).

downstream and 1 Mbps upstream to all locations in project census blocks in Colorado, Idaho, Iowa, Kansas, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Texas, Virginia, and Washington.”⁸ The post-selection review process for these 12 bidders now begins. In the review process, the FCC is required to determine whether each selected applicant has demonstrated that it has the technical and financial qualifications to successfully complete the regulatory requirements for the universal support, which includes obtaining ETC designation from state Commissions by March 5, 2015 for the Service Area.⁹

The Application

First Step is a facilities-based regional Internet Service Provider, offering fixed broadband Internet access services, and “a variety of fixed terrestrial broadband services, including dial up, DSL, fiber, cable Internet and fixed wireless broadband services.” Application at 2. The Company also offers voice services using Voice over Internet Protocol (VoIP) technology. *Id.* The service area for which the Company requests designation is set forth in Exhibit 1 of the Company’s Application, but includes part of eastern Washington, and remote parts of Clearwater, Idaho, Latah, Lewis and Nez Perce Counties. *Id.*

First Step states that the RBE uses Connect America funding to advance broadband networks in rural communities in price cap areas. *Id.* at 3. The FCC provisionally selected First Step to receive RBE funding, but requires the Company to obtain and confirm ETC status, among other technical and financial qualifications. *Id.* at 1-2. First Step asks the Commission to grant the Company ETC status that is “conditional and effective upon it being awarded” FCC funding for participation in the RBE. *Id.* at 2.

The Company states it qualifies for ETC designation under the federal Telecommunications Act (47 U.S.C. § 214(e)(1)), the Federal Communications Commission’s eligibility rules (47 C.F.R. § 54.101(a)), and other requirements set forth by this Commission, outlined in the Appendix to Commission Order No. 29841. *Id.* at 4-9.

The Company asserts it satisfies the requirements for designation as an ETC in that it: (1) has common carrier status; (2) commits and is able to provide services supported by federal universal support mechanisms; (3) will advertise the availability of supported services; (4) will,

⁸ *Wireline Competition Bureau Announces Entities provisionally Selected Bidders for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, WC Docket No. 10-90, Public Notice, DA 14-1772 (rel. Dec. 5, 2014). See Exhibit 2.

⁹ *Id.* Attachment B at 4.

through its ETC designation, advance the public interest, convenience and necessity; (5) is not seeking ETC designation for any part of Tribal Lands; (6) commits and is able to provide supported services as required by this Commission for ETC status; (7) is capable of managing traffic and maintaining functionality without an external power source; (8) complies with applicable consumer protection and service quality standards; and (9) will comply with annual reporting requirements established by this Commission. *Id.*

With the Application, First Step included an Exhibit 3 outlining the Company's two-year project improvement plan for "deployment of a 4GLTE-Td fixed Radio Access Network (RAN) to provide 10 Mbps/1Mbps broadband Internet access along with voice-over-IP telephony service, to serve the [109] census blocks identified in Exhibit 1." *Id.* at 19. The projected start date is May 1, 2015 and the Company states that it expects 25% of the project build-out will be completed by April 30, 2016. Coverage to 100% of the planned service area will be completed within two (2) years and "the estimated population that will be served as a result of these improvements is 542 currently unserved locations." *Id.* at 23.

STAFF ANALYSIS

Staff has reviewed First Step's Application and has conducted an analysis of the Company's fulfillment of the federal Telecommunications Act of 1996, the Connect America Fund requirements, and Commission Order No. 29841. In addition, Staff has analyzed the public interest benefits of awarding the Company a conditional ETC designation. Specific state and federal requirements for ETC designation are discussed in more detail below.

Public Interest Analysis

When applying the public interest test in an Application for ETC designation, Staff believes there are two primary considerations that merit discussion. First, Staff verifies that the Company will contribute to the appropriate Idaho Funds. Second, Staff analyzes whether the Company's application raises "cream skimming" concerns.

Staff believes the first consideration is satisfied because First Step's wholesale service provider registration subjects the Company to the following conditions: (1) Compliance with Number Pool Administrator and Order No. 30425 mandating number resource utilization forecast reporting; (2) as appropriate, contribution to the Idaho Universal Service Fund, Idaho Telecommunications Relay System, Idaho Telephone Assistance Program, and any future

reporting requirements deemed appropriate for competitive telecommunications providers. *See* Order No. 32383 at 3. On January 22, 2013, the Commission approved First Step as a registered wholesale provider of local telecommunications services within the State of Idaho. *See* Order No. 32721.

The Commission explained its “cream skimming” concerns in Order No. 29541. To summarize, a request for ETC designation for an area less than the entire study area of a rural telephone company generally raises concerns that an Applicant intends to “cream skim” in the rural study area.¹⁰ In this case, the FCC’s RBE funds are applied to census blocks rather than study areas. Thus, Staff believes the cream skimming consideration is irrelevant for this Application.

First Step asserts that designation as an ETC is consistent with the Public Interest, Convenience and Necessity. Through the RBE, the public interest will be served with the accelerated deployment of voice and broadband-capable networks in unserved rural, high-cost areas, including extremely high-cost areas. Application at 6, 9-10. Additionally, “ETC designation will allow rural areas that the FCC has deemed unserved to become served with broadband and voice services that meet FCC-defined metrics.” *Id.* at 7. For these reasons, Staff believes First Step satisfies the public interest considerations.

Ability to Remain Functional in Emergencies

First Step asserts it has the ability to remain functional in emergencies and satisfies the requirements of the FCC and the Idaho ETC Order. Specifically, the Company states it has adequate amounts of back-up power to ensure functionality without an external power source, and maintains a redundant middle-mile backbone network with redundant paths and network rings. Power outage protection is available at all sites through battery backup or gas-powered generators. *Id.* at 8. Staff believes the Company satisfies this requirement.

Other ETC Designation Requirements

Additional requirements for ETC designation are detailed in the Appendix 1 of Order No. 29841 and discussed more fully below.

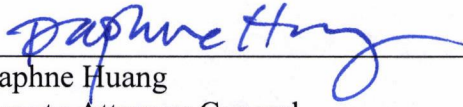
¹⁰ *Recommended Decision, In the Matter of Federal-State Joint Board on Universal Service* CC Docket No. 96-45, 12 F.C.C.R. 87, 180 at ¶ 172 (1996) (stating that potential cream skimming is minimized when competitors, as a condition of eligibility for universal service support, must provide services throughout a rural telephone company study area).

1. Common Carrier Status. First Step is a common carrier as defined in 47 U.S.C. § 214(e). *Id.* at 4-5.
2. Provide the Universal Services. First Step will provide the supported services identified in Section 47 C.F.R. § 54.101(a). *Id.*
3. Advertising. First Step will advertise the availability and pricing of its universal service offering. *Id.* at 6.
4. The Commitment and Ability to Provide Supported Service. First Step will provide supported services. *Id.* at 5-7.
5. Commitment to Consumer Protection and Service. First Step will comply with applicable consumer protection and service quality standards specified by the FCC and the CTIA Consumer Code. *Id.* at 8-9.
6. Description of the Local Usage Plan. First Step's service offerings are comparable to the offerings of the incumbent local exchange carrier (ILEC). *Id.* at 9.
7. Tribal Notification. First Step is not seeking ETC designation in Tribal Lands and does not propose to install equipment within Tribal borders. *Id.* at 7.

STAFF RECOMMENDATION

Based on its review of the Company's Application, Staff believes that First Step has the requisite technical, financial, and managerial expertise as well as the commitment to fulfill the obligations of an ETC in Idaho. First Step will provide all universal services supported by the federal USF throughout its designated service area; it has addressed all public interest questions that accompany an ETC Application; and the Company will expand broadband services into unserved areas. Staff believes First Step's Application for a conditional ETC designation to participate in the FCC's Rural Broadband Experiments is in the public interest and should be approved for the census blocks as outlined in Exhibit 1 of the Application.

Respectfully submitted this 3rd day of February 2015.



Daphne Huang
Deputy Attorney General


Technical Staff: Grace Seaman

i:\misc\comments\fsit14.1\djhg comments

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 3RD DAY OF FEBRUARY 2015, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. FSI-T-14-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

KEVIN OWEN
PRESIDENT
FIRST STEP INTERNET LLC
1420 S BLAINE ST
MOSCOW ID 83843
E-MAIL: kowen@fsr.com



SECRETARY