

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

In the Matter of)	
)	
Appropriate Framework for Broadband)	CC Docket No. 02-33
Access to the Internet over Wireline Facilities)	
)	
Universal Service Obligations of Broadband)	
Providers)	
)	
Computer III Further Remand Proceedings:)	CC Dockets Nos. 95-20, 98-10
Bell Operating Company Provision of)	
Enhanced Services; 1998 Biennial Regulatory)	
Review – Review of Computer III and ONA)	
Safeguards and Requirements)	

**REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

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SUMMARY

The record in this proceeding supports the need to preserve the ability of rural incumbent local exchange carriers (ILECs) to participate in pools for their provision of digital subscriber line (DSL)-based services. Commenters explain that the risk sharing and cost averaging benefits provided by the revenue pools administered by the National Exchange Carrier Association (NECA) are what allow many high-cost rural ILECs to offer advanced services to their customers at reasonable rates. Without pooling, many rural ILECs would be forced to charge exorbitant rates for DSL service just to recover their costs, thereby undermining any business case for deployment. Therefore, should the Commission decide to reclassify wireline broadband Internet access, it must preserve pooling and avoid a “one size fits all” approach to its regulation of such services.

In addition, commenters support expanding the base of contributors to the universal service fund to include all facilities-based broadband Internet access providers. Commenters concur with OPASTCO that Section 254(d) provides the Commission with broad authority to require all facilities-based broadband Internet access providers to contribute. The Commission has previously acknowledged that overall end-user switched interstate telecommunications revenues, which make up the current contribution base, are now on the decline. In addition, commenters cite current market data and recent studies demonstrating significant growth in broadband Internet access services over platforms that do not presently contribute to the fund, with no sign of abatement. Therefore, the public interest would be served by requiring all facilities-based broadband Internet access providers to contribute equitably to universal service, prior to any large

scale migration from circuit-switched interstate telecommunications services that would seriously undermine the contribution base.

Moreover, the record indicates that the Commission must require facilities-based broadband Internet access providers over all platforms to contribute in order to comply with both the nondiscrimination requirement of Section 254(d) and the Commission's principle of competitive and technological neutrality. As subscribership to broadband Internet access grows, so too does the inequity of requiring only wireline telecommunications carriers to contribute on the basis of their broadband services. Therefore, the Commission should require all facilities-based broadband Internet access providers to contribute equitably to the fund prior to, or concurrent with, any decision made in the Universal Service Contribution Methodology proceeding.

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**REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) submits these reply comments in response to comments filed in the above-captioned proceeding.¹ OPASTCO is a national trade association representing over 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All OPASTCO members are

¹ *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33; *Universal Service Obligations of Broadband Providers*; *Computer III Further Remand Proceedings*; *Bell Operating Company Provision of Enhanced Services*; *1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) (NPRM).

rural telephone companies as defined in 47 U.S.C. §153(37). Most OPASTCO member carriers are either presently offering, or are preparing to offer, broadband or high-speed services to their customers.

II. COMMENTING PARTIES AGREE THAT A POOLING OPTION MUST BE RETAINED FOR RURAL ILECS' PROVISION OF DSL-BASED SERVICES

OPASTCO's initial comments in this proceeding explained the need for the Commission to retain a pooling option for DSL-based advanced services offered by rural ILECs.² Significantly, no commenters advocated an opposing viewpoint. Rather, all parties commenting on behalf of rural ILECs agree, and convincingly demonstrate the continuing need for pooling.³ NECA highlights the fact that, since it began including DSL services within its pools, more than 480 rate-of-return ILECs have utilized pooling mechanisms to provide advanced services to rural consumers.⁴ The Nebraska Independents cogently explain the essential risk sharing and cost averaging benefits pooling provides for high-cost rural carriers:

The ability to pool costs and average prices allows LECs in high cost markets to offer xDSL services at prices that promote demand levels that justify investments in a broadband-capable network. Because the xDSL service prices are particularly elastic in high cost markets where income is below the national average... pricing at actual service costs will ultimately represent a disincentive for investment as demand for the service will be severely limited.⁵

The Western Alliance provides figures which demonstrate how pooling allows

² OPASTCO comments, pp. 3-5.

³ Fred Williamson & Associates (FWA), pp. 5-6; GVNW, pp. 6-7; NECA, pp. 3-4; National Rural Telecom Association (NRTA), pp. 16-18; National Telecommunications Cooperative Association (NTCA), pp. 5-7; Nebraska Independent Companies (Nebraska Independents), pp. 4-5; United States Telecom Association (USTA), p. 8 (fn. 17), pp. 11-12; Western Alliance, pp. 5-7.

⁴ NECA, p. 3.

⁵ Nebraska Independents, p. 5.

customers in high-cost areas to have access to DSL-based services for \$35.95 per month. Without pooling, rural ILECs would be forced to charge much higher rates – up to nearly \$300 per month – simply to recover costs.⁶ Certainly, such high rates would seriously impact the ability and willingness of rural consumers to subscribe to DSL-based services, thereby undermining any business case a rural ILEC may have for deployment.

In addition, GVNW underscores how the service environments of rural carriers are vastly different from both those of large carriers and from each others'.⁷ Given these differences, it is not surprising that there is a degree of variance which can be found among comments filed by representatives of rural ILECs. However, the core message of the important role that pooling plays in the ability of many rural providers to make advanced services available remains a consistent theme among these commenters.

Another recurring theme found throughout comments submitted by those most concerned with rural service areas is also apparent: a “one size fits all” approach to rules which may accompany any eventual reclassification of wireline broadband Internet access is not appropriate.⁸ The Commission must therefore preserve pooling and account for the significant differences of rural carriers if wireline broadband Internet access is reclassified.

⁶ Western Alliance, pp. 5-6.

⁷ GVNW, pp. 3-5.

⁸ Beacon Telecommunications Advisors (Beacon), pp. 3-4; FWA, p. 19; GVNW, p. 7. These commenters also address unbundling and line sharing requirements. They echo earlier OPASTCO comments regarding the need for advanced services provided by rural carriers to be unfettered by inappropriate regulations which fail to account for differing rural conditions. Indiscriminately sweeping rural carriers into the same regulatory regime established for large carriers stifles investment that would benefit rural consumers. *See*, OPASTCO comments, CC Docket Nos. 98-147, 96-98 (fil. Oct. 12, 2000), pp. 2-7; OPASTCO comments, CC Docket No. 98-146 (fil. March 20, 2000), pp. 6-7, and reply comments (fil. April 4, 2000), pp. 3-5.

III. THERE IS SIGNIFICANT SUPPORT IN THE RECORD FOR THE COMMISSION TO EXERCISE ITS AUTHORITY TO REQUIRE ALL FACILITIES-BASED BROADBAND INTERNET ACCESS PROVIDERS TO CONTRIBUTE EQUITABLY TO UNIVERSAL SERVICE

In its initial comments, OPASTCO recommended that the Commission exercise its authority to require all facilities-based broadband Internet access providers to contribute to universal service.⁹ The record in this proceeding demonstrates that the Commission does indeed have the permissive authority to require these providers to contribute.¹⁰ Furthermore, numerous commenters agree that the public interest requires every facilities-based broadband Internet access provider, regardless of platform, to contribute equitably to the fund.¹¹ Commenters point out that such contributions are essential to maintaining the stability and sufficiency of the fund for the long term in light of marketplace trends, which threaten the existing contribution base.¹² Lastly, commenters note that contributions from all facilities-based broadband Internet access providers “on an equitable and nondiscriminatory basis”¹³ is consistent with – and, indeed, compelled by – the Commission’s principle of competitive and technological neutrality.¹⁴

⁹ OPASTCO comments, pp. 11-19.

¹⁰ *See*, Allegiance Telecom (Allegiance), pp. 65, 68; BellSouth, p. 30; FWA, p. 22; NRTA, pp. 20-21; State Consumer Advocates, pp. 59-61.

¹¹ *See*, Allegiance, pp. 65-69; Alliance for Public Technology (APT), pp. 9-10; BellSouth, pp. 29-31; California PUC, pp. 45-46; FWA, pp. 22-29; NECA, pp. 4-5; NRTA, pp. 19-25; NTCA, pp. 7-9; SBC, pp. 41-46; State Consumer Advocates, pp. 57-66; Verizon, pp. 42-43; Verizon Wireless, pp. 12-16.

¹² *See*, BellSouth, pp. 30-31; FWA, p. 23; NRTA, pp. 21-23; NTCA, p. 8; State Consumer Advocates, pp. 63-64; Verizon Wireless, pp. 14-15.

¹³ 47 U.S.C. §254(d).

¹⁴ *See*, Allegiance, p. 69; BellSouth, p. 32; NRTA, pp. 23-25; NTCA, p. 8; SBC, pp. 43-44; State Consumer Advocates, pp. 61-63; Verizon, pp. 42-43.

a. Commenters agree that the Commission has the permissive authority to require facilities-based broadband Internet access providers over all platforms to contribute to the universal service fund

Commenters concur with OPASTCO that Section 254(d), which permits the Commission to require “[a]ny other provider of interstate telecommunications ... to contribute to the preservation and advancement of universal service if the public interest so requires,” provides the FCC with broad authority to require all facilities-based broadband Internet access providers to contribute.¹⁵ Both NRTA and the State Consumer Advocates agree that the Commission could require all facilities-based Internet service providers (ISPs) to contribute to universal service “based upon their self-provisioning of telecommunications.”¹⁶ Clearly, all broadband Internet access providers who use their own transmission facilities to engage in data transport also provide telecommunications to themselves, regardless of the platform they employ.¹⁷

Some commenters incorrectly claim that, were the Commission to reclassify wireline broadband Internet access from a telecommunications service to an information service, it would lose the legal authority to require universal service contributions.¹⁸ However, this view ignores the fact that the definition of an “information service” contained within the 1996 Act states that such services are made available “via

¹⁵ See, Allegiance, pp. 65, 68; BellSouth, p. 30; FWA, p. 22; NRTA, pp. 20-21; State Consumer Advocates, pp. 59-61.

¹⁶ NRTA, p. 20; State Consumer Advocates, p. 61 (citing the Commission’s 1998 Report to Congress, which stated that “facilities-based ISPs that provide no stand alone telecommunications services” would be subject to this permissive authority. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11534-11535, paras. 66, 69 (1998)(Report to Congress)). See also, SBC, p. 42.

¹⁷ See, NRTA, p. 20. See also, OPASTCO, p. 13.

¹⁸ See, Business Telecom, Inc., CTC Communications Corp., Florida Digital Network, Inc., GlobalCom, Inc., and RCN Telecom Services, Inc., pp. 63-65; California Internet Service Providers Association, pp. 70-71; CBeyond, El Paso, Focal, New Edge, and Pac-West, pp. 69-70; Ohio Internet Service Providers Association, Texas Internet Service Providers Association, and Washington Association of Internet Service Providers, pp. 71-73.

telecommunications.”¹⁹ Indeed, in the recent Cable Modem Order, the Commission, while choosing to classify cable modem service as an information service, acknowledged that its provision is accomplished “via telecommunications.”²⁰ Consequently, it is clear that the 1996 Act permits the Commission to require contributions from facilities-based broadband Internet access providers, even if it chooses not to classify such services as telecommunications services.

b. The record demonstrates that the public interest compels a requirement that all facilities-based broadband Internet access providers contribute to universal service

Numerous commenters discuss the fact that, in light of recent trends within the marketplace for interstate telecommunications, broadening the base of contributors to include all facilities-based broadband Internet access providers would serve the public interest by ensuring a sustainable contribution base for the long term.²¹ As NTCA notes, this strengthening of the contribution base would help to “ensure comparable and affordable services throughout the nation,”²² as Section 254 requires.

Despite the fact that the contribution base and interexchange carrier (IXC) interstate revenues are declining,²³ overall demand for interstate telecommunications and information services has probably never been greater. Several commenters explain that

¹⁹ 47 U.S.C. §153(20).

²⁰ *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, *Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CS Docket No. 02-52, 17 FCC Rcd 4798, 4823, para. 39 (2002) (Cable Modem Order). *See also*, NRTA, pp. 20-21.

²¹ *See*, BellSouth, pp. 30-31; NRTA, pp. 21-23; NTCA, pp. 8-9; State Consumer Advocates, pp. 57, 63-64; Verizon Wireless, pp. 14-15; FWA, pp. 23, 29.

²² NTCA, p. 9.

²³ *See, Federal-State Joint Board on Universal Service, et. al.*, CC Docket No. 96-45, *et. al.*, Further Notice of Proposed Rulemaking, 17 FCC Rcd 3752, 3756, paras. 7-8 (2002) (Universal Service Contribution Methodology FNPRM). *See also*, Trends in Telephone Service: 2002, First Report, Industry Analysis and Technology Division, WCB, Table 16.2 (rel. May 22, 2002).

customers use broadband services and Internet Protocol (IP) networks in a variety of ways (*e.g.*, access to the World Wide Web, e-mail, instant messaging, Internet telephony) and via various platforms (*e.g.*, wireless, cable, satellite) to substitute for interstate calls on the public switched network.²⁴ However, as “[d]ifferent facilities and technologies emerg[e] as substitutes for traditional circuit-switched telecommunications services,”²⁵ many of these new service providers are not required to contribute, thus eroding the funding base for universal service.

Moreover, commenters note that current market data demonstrates significant growth in broadband Internet access services over platforms that do not presently contribute to universal service. NRTA points to Commission statistics indicating that high-speed lines utilizing cable modem technologies are being deployed at an explosive rate, clearly setting the pace in the provision of broadband services.²⁶ Charter Communications concurs, boasting that it and fellow cable operators are “the present market leader[s] in deploying consumer-level broadband services.”²⁷

NRTA goes on to cite several recent studies, also noted by OPASTCO, which indicate that the explosive growth in subscribership to cable modem service has not abated.²⁸ In light of projections such as these, assertions from the National Cable &

²⁴ See, BellSouth, pp. 30-31; Illinois Commerce Commission, p. 29; NRTA, p. 22; FWA, p. 23. See also, OPASTCO, pp. 15-16.

²⁵ NTCA, p. 8.

²⁶ NRTA, p. 22. NRTA, citing the Commission’s Third Report on the deployment of advanced telecommunications capability, notes that “cable companies report almost 5.2 million high-speed lines in service using cable modem technology at the end of June 2001, compared to 1.4 million at the end of 1999.” This is an approximately 270 percent increase in cable modem lines in service for this period.

²⁷ Charter Communications (Charter), pp. 6-7.

²⁸ NRTA, pp. 22-23. NRTA noted that “[o]ne study estimates that cable modem subscriptions ‘will continue to increase dramatically, reaching an estimated 28-30 million by 2006.’ With such a rapid deployment rate, it comes as no surprise that in the near future, ‘more than 50% of all broadband customers will get onto the Internet through a cable modem.’” (citing Richard Bilotti, Benjamin Swinburne, and Megan Lynch, *Broadband Cable Television, The Past is Prologue to the Future...*, Morgan Stanley Equity OPASTCO Reply Comments

Telecommunications Association (NCTA) and others that there is presently no evidence of any significant number of customers migrating from circuit-switched to IP-based services, nor is it likely that such services will endanger universal service support,²⁹ are hollow and self-serving. Rather than ignoring these impending developments, “the FCC should have the foresight to recognize this potential path of evolution and ensure that such trends do not further jeopardize existing universal service support systems.”³⁰

Furthermore, commenters who claim that a contribution requirement imposed on all facilities-based broadband Internet access providers would “further disadvantage and delay introduction of [broadband services]”³¹ are belied by the rapid deployment of wireline broadband Internet access services by telecommunications carriers that are already required to contribute.³² For instance, OPASTCO has stated repeatedly that many rural ILECs have deployed or are planning to deploy broadband services via DSL-based technologies. Rural ILECs face numerous challenges to broadband deployment, due to many of the same factors that make traditional voice service difficult and expensive to deploy. However, these small carriers have not found the requirement that they contribute to USF on the basis of revenues earned from DSL, in and of itself, to be a hindrance to deployment. Consequently, it is difficult to fathom that the broadband

Research, Oct. 4, 2001, at 28-30 and also Mike Goodman, *Residential Broadband – Provisioning Cable Modem Service*, Yankee Group Reports, October 18, 2001, Executive Summary). *See also*, OPASTCO, pp. 16-17.

²⁹ NCTA, p. 7. *See also*, ITAA, pp. 44-45; Sprint, p. 19.

³⁰ State Consumer Advocates, p. 63.

³¹ SES Americom, p. 3. *See also*, Charter, pp. 6-7; Hughes Network System, Inc., Hughes Communications, Inc., and Hughes Communications Galaxy, Inc. (Hughes), pp. 2-4; Part 15.org, pp. 3, 6; Wireless Communications Association International (WCA), pp. 5-6.

³² In June 2001, there were a total of 3.8 million high-speed lines in service utilizing DSL technology, as compared to just over 1.0 million lines utilizing this technology only eighteen months earlier. *See, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Third Report, 17 FCC Rcd 2844, 2864-2867, paras. 44, 49, and 52 (2002).

deployment efforts of large, nationally based corporations, such as Hughes Network Systems, would be stymied by a contribution requirement that is imposed equitably on all facilities-based providers.

Moreover, “when some telecommunications providers are not required to contribute to universal service, the burden on those who are required to contribute is greater.”³³ However, if all facilities-based broadband Internet access providers were required to contribute, then the burden on each individual provider would be minimized to the greatest extent possible.³⁴ Ensuring the long-term stability and sufficiency of universal service and encouraging the ubiquitous availability of broadband are not mutually exclusive goals.

- c. **The record demonstrates that all facilities-based broadband Internet access providers must contribute equitably to universal service, in order to comply with Section 254(d) and the Commission’s principle of competitive and technological neutrality**

As OPASTCO and other commenters have explained, a requirement that facilities-based broadband Internet access providers over all platforms contribute equitably to universal service is necessary to comply with the nondiscrimination requirement of Section 254(d), as well as the Commission’s own principle of competitive and technological neutrality.³⁵ Verizon accurately describes the likely regulatory arbitrage that would result from continuing to require only wireline telecommunications carriers to contribute on the basis of revenues earned from broadband transmission service, while exempting all other broadband providers and platforms from the

³³ NRTA, p. 23.

³⁴ See, Verizon Wireless, p. 14.

obligation:

If telephone companies face universal service obligations for broadband that are not imposed on cable, satellite, and terrestrial wireless providers, then telephone companies will bear an additional expense that will be passed on to customers. That will make their services relatively less attractive than cable, satellite, and terrestrial wireless broadband and will result in market distortions.³⁶

Clearly, these sorts of “market distortions” are at odds with the Commission’s stated goal of avoiding the creation of regulatory distinctions based purely on technology.³⁷

Customers should not be driven to one broadband Internet access provider or platform over another based on the Commission’s universal service contribution policy.

SBC indicates that the Commission’s current rules “result in a 7 percent (or more) surcharge being applied to DSL service, but not to competing broadband services.”³⁸ As NRTA notes, if a connection-based methodology is adopted without including all facilities-based broadband Internet access providers, the DSL competitive inequity will grow still greater.³⁹ Therefore, prior to, or concurrent with, any decision made in the Universal Service Contribution Methodology proceeding, all facilities-based broadband Internet access providers should be added to the list of contributors.

IV. CONCLUSION

OPASTCO and the vast majority of commenters in this proceeding support the Commission’s efforts to achieve a minimal regulatory environment for broadband Internet access services. However, all commenters representing rural carriers agree that the Commission must preserve the ability of rural ILECs to utilize a pooling mechanism,

³⁵ See, Allegiance, p. 69; NRTA, pp. 23-25; NTCA, p. 8; SBC, pp. 43-44; State Consumer Advocates, pp. 62-63; Verizon, pp. 42-43.

³⁶ Verizon, pp. 42-43.

³⁷ See, Report to Congress, 13 FCC Rcd 11548-11549, para. 98.

³⁸ SBC, p. 43.

which is vital to many of these carriers' ability to offer affordable DSL-based Internet access service to their customers. In addition, a significant number of commenters agree that the Commission must broaden the base of universal service contributors to include facilities-based broadband Internet access providers over all platforms in order to establish a sufficient, stable, and competitively neutral universal service support mechanism for the long term.

Respectfully submitted,

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³⁹ NRTA, p. 24.
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CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the reply comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent on this, the 1st day of July, 2002 by first class United States mail, postage prepaid, to those listed on the attached sheet.

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