

Organization for the Promotion and Advancement of Small Telecommunications Companies

Ex Parte Presentation

CC Docket No. 96-45

Federal-State Joint Board on Universal Service

Joint Board proceeding on high-cost support portability
and the ETC designation process

Three Fundamental Recommendations

- **Methodology for calculating support in competitive study areas: Support for CETCs in rural service areas should be calculated using their own embedded costs.**
- **Scope of support: The High-Cost program should support the cost of ETCs' networks, not lines.**
- **Process for designating ETCs: Public interest principles and standardized criteria should be adopted to guide state commissions and the FCC in their consideration of ETC applications for rural service areas.**



OPASTCO Position

- **Support for CETCs in rural service areas should be calculated using their own embedded costs.**
 - Would result in payments that are “sufficient”, but not more so, and “specific” to each carrier’s own circumstances, consistent with Sec. 254(b)(5) of the 1996 Act.
 - Would promote compliance with Sec. 254(e) requirement that support only be used for provision, maintenance and upgrading of facilities and services.
 - Would promote efficient competitive entry in high-cost areas, since carriers would no longer have perverse incentives to seek ETC status merely to receive windfall support payments.
 - Utilizing the same support calculation methodology for all ETCs is competitively neutral.



OPASTCO Position

- **Support for CETCs in rural service areas should be calculated using their own embedded costs.**
 - There should be cost reporting parity between ILECs and CETCs.
 - The change in methodology for calculating CETC support should be made as soon as the FCC can develop cost reporting requirements for these carriers.



Arguments of Others

- **Equal per-line support encourages efficient market entry.**

OPASTCO POSITION:

- Wireless providers are already successfully serving rural markets and competing for customers without high-cost support.
- For the most part, CETCs are asking for high-cost support for lower-cost customers they already serve.
- To the extent that they do expand into higher cost areas, this will be reflected in their actual costs.

- **Competitive neutrality requires equal per-line support.**

OPASTCO POSITION:

- Equal support for carriers with different costs, incentives, and responsibilities is the opposite of competitive neutrality.



Arguments of Others

- **Supporting each ETC based on their own costs would shield rural ILECs from the consequences of their “inefficiency.”**

OPASTCO POSITION:

- A rural ILEC’s higher costs do not reflect inefficiencies.
 - Rural ILECs provide a different level of service than most CETCs (ex. service availability, bandwidth, network capacity, equal access, etc.) and are subject to regulatory obligations and standards not imposed on most CETCs (ex. COLR, service quality standards, rate regulation, etc.).
 - CETCs can potentially be designated for only a portion of a rural ILEC’s study area, which may not include the highest-cost areas.
 - Rural ILECs lack the economies of scale of large wireless carriers.
- Providing windfall support to CETCs takes any efficiencies that competition may create and puts it in the pocket of the CETC.



Arguments of Others

- **Per-line support amounts in competitive study areas should be capped or frozen.**

OPASTCO POSITION:

- To achieve the Act's objectives, carriers need support for networks, which are a necessary precondition for the existence of a line.
- Rural ILECs have high fixed costs and the loss of subscriber lines are not offset by corresponding reductions in network costs.
- In the RTF Order, the FCC correctly found that freezing support in competitive study areas may discourage investment in infrastructure.
- If the capital markets believe that rural ILECs will not be able to recover their costs, financing for rural telecommunications will become scarce.
- Without infrastructure investment, consumers in high-cost areas would lack access to services that are reasonably comparable to those in urban areas.



Arguments of Others

- **A support calculation methodology based on forward-looking economic costs (FLEC) should be adopted for rural service areas.**

OPASTCO POSITION:

- For rural ILECs, high-cost support is cost recovery. Providing rural ILECs with support based on their embedded costs has been critical to encouraging infrastructure investment and providing rural consumers with affordable and “reasonably comparable” services and rates.
- The RTF has already convincingly demonstrated that applying the non-rural FLEC model to rural ILECs would produce results that are likely to vary widely from reasonable estimates for forward-looking costs.
- Rural ILECs do not have the ability to “average out” discrepancies in a model’s cost calculations for individual wirecenters, which could potentially leave a carrier with a serious deficiency (or surplus) in “sufficient” support.



OPASTCO Position

- **The High-Cost program should support the cost of ETCs' networks, not lines.**
 - Most commenters, wireline and wireless, oppose limiting support to primary lines.
 - Service providers do not build lines. They build networks.
 - If service providers are uncertain of network cost recovery due to a primary line restriction, investment in network infrastructure will be inhibited.
 - It makes no sense to designate multiple ETCs in a rural service area and then have a primary line policy that curtails support to such an extent that no ETC has the predictable and sufficient funding necessary to cover their costs and encourage network investment.



OPASTCO Position

- **The High-Cost program should support the cost of ETCs' networks, not lines.**
 - The administrative complexities that resulted from applying different primary and non-primary residential SLCs would be even greater in the context of a primary line restriction.
 - A primary line restriction defeats the Act's objectives of affordable and "reasonably comparable" rates for additional lines in high-cost areas.
 - If support is limited to primary lines, rural ILECs should no longer have any obligation to serve a customer for which it has not been chosen as the primary line provider. If a rural ILEC chooses to provide customers with unsupported non-primary lines, it should be completely deregulated for those lines and be permitted to charge a market-based rate.



Arguments of Others

- **Support for second lines is not essential. The purpose of the High-Cost program is to ensure affordable access to the public switched network for every household, not every line.**

OPASTCO POSITION:

- Section 254(b)(3) of the 1996 Act calls for rates in rural areas to be *affordable* and *reasonably comparable* to the rates available in urban areas. Nowhere does the Act limit these objectives to primary lines.
- Under a primary line restriction, rates for second lines in high-cost areas would, in some cases, no longer be affordable, and in most cases would no longer be reasonably comparable to the rates available in urban areas.
- Section 254(e) of the 1996 Act calls for high-cost support to be used for infrastructure investment. Under a primary line restriction, infrastructure investment would be hindered, since there would be no certainty as to how much a carrier would receive and whether that support would be sufficient to recover its costs.



Arguments of Others

- **Administrative difficulties will not present a problem.**

OPASTCO POSITION:

- The FCC abandoned its primary/non-primary line distinction for price cap carrier residential SLCs, finding that it created customer confusion and imposed costs that were ultimately borne by consumers.
- Customer “gaming” experienced with primary and non-primary residential SLCs (when the difference was a dollar or two) will pale with support levels of \$20, \$50 or \$100 or more. It is inappropriate to expect carriers to pry into the private living arrangements of their customers in order to minimize abuse.
- Likely that a new type of “slamming” would arise. If only primary lines receive support, some carriers may be driven to switch consumers’ choice of primary line provider without their knowledge.



OPASTCO Position

- **Public interest principles and standardized criteria should be adopted to guide state commissions and the FCC in their consideration of ETC applications for rural service areas.**
 - Congress did not presume that supported competition would always serve the public interest in rural service areas.
 - Both the costs and the benefits of designating an additional ETC must be carefully weighed if limited federal funding is to be managed for the optimum public benefit.
 - Standardized criteria would help to make sure that before a carrier is designated as an ETC that it is capable of, and committed to, being a true provider of universal service.
 - CETC designations in rural service areas should be made at the study area level.



Arguments of Others

- **Public interest determinations should only be based on the benefits of competition in rural service areas.**

OPASTCO POSITION:

- The issue is not “competition” – competitors using multiple technology platforms already compete throughout rural America. The real issue is: When is supporting multiple competing providers in high-cost areas in the public interest?
- If Congress believed that supporting competition was always beneficial to consumers in rural service areas, there would have been no need for Section 214(e)(2) of the Act to say that state commissions “may” designate more than one carrier, as opposed to “shall,” or require a special public interest determination just for these service areas.
- Thus, factors *other than* the promotion of competition should play the dominant role in public interest determinations for rural service areas.



Arguments of Others

- **State commissions should not impose any additional requirements on CMRS providers as a condition of becoming an ETC.**

OPASTCO POSITION:

- As a prerequisite to obtaining ETC status in a rural service area, a carrier should be able and willing to adhere to the same service obligations and regulatory standards imposed on the ILEC.
- Once designated as an ETC, a CMRS provider is holding itself out as a *substitute* for the ILEC. State commissions therefore need to be certain that an ETC applicant can provide the same level of service as the ILEC.
- The preemption from state regulation that CMRS providers are afforded under Section 332 of the Act cannot be equated with conditions that apply only to carriers that choose of their own volition to seek ETC designation and universal service support.



Arguments of Others

- **So long as a rural ILEC is required to disaggregate its support when a CETC is designated, it should not matter if the CETC is designated for a service area that does not encompass the rural ILEC's entire study area.**

OPASTCO POSITION:

- Section 214(e)(5) of the Act establishes a presumption that a rural telephone company's entire study area is the area that a competitor has to agree to serve before it can become eligible for high-cost support.
- There is a heightened risk of creamskimming when CETCs are designated for portions of a rural ILEC's study area. Creamskimming is antithetical to the objectives of high-cost support and universal service.
- Disaggregation plans do not remove the inherent problems that are created by basing a CETC's support on the ILEC's cost. This is one reason why so few rural ILECs chose to disaggregate their support when they had the opportunity.

Three Fundamental Recommendations

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