Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Local Telephone Competition and Broadband Reporting	)	WC Docket No. 04-141
	)	
Local Competition and Broadband Reporting	)	CC Docket No. 99-301
	)	

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

I. INTRODUCTION AND SUMMARY

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking (NPRM) in the local telephone competition and broadband reporting proceeding.[1] OPASTCO is a national trade association representing over 560 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37).

OPASTCO recognizes the Commission's need for relevant data on the availability

[1] *Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141, *Local Competition and Broadband Reporting,* CC Docket No. 99-301, Notice of Proposed Rulemaking and Order on Reconsideration, FCC 04-81 (rel. April 16, 2004) (NPRM).

of advanced services in order to make informed decisions and to fulfill its obligations under Section 706 of the Telecommunications Act of 1996 (the Act). However, there is no need to increase the granularity of the data collected or to lower the reporting threshold, as sought in the NPRM. Sufficient data is already available from other sources and increasing numbers of rural carriers will be required to file Form 477 under the existing reporting threshold as broadband take rates continue to grow. Moreover, the costs and burdens that the proposed reporting requirements would impose on rural carriers and their customers would outweigh any potential benefits that the information may provide and may actually make it more difficult for these carriers to roll out their broadband service. Finally, it is essential that the Commission keep the data reported by rural ILECs confidential for the long term.

II. THE ADDITIONAL INFORMATION THAT THE COMMISSION SEEKS TO COLLECT FROM BROADBAND SERVICE PROVIDERS IS NOT NECESSARY IN ORDER TO SATISFY ITS OBLIGATIONS UNDER SECTION 706 OF THE ACT

The Commission correctly notes that it is required, under Section 706 of the Act, to initiate notices of inquiry on a regular basis concerning the availability of advanced services to all Americans.[2] The NPRM asks whether the collection of more granular data from broadband service providers is essential in order for the Commission to more effectively support its study of broadband service deployment, as required under Section 706.[3] Yet, the NPRM does not explain how the Commission expects the collection of

[2] NPRM, Appendix A (Initial Regulatory Flexibility Analysis), para. 2. *See also, Local Competition and Broadband Reporting*, Second Notice of Proposed Rulemaking, CC Docket No. 99-301, 16 FCC Rcd 2072, 2073, 2087, paras. 2 and 39 (2001)(Second NPRM).

[3] NPRM, para. 1, and Appendix A, para. 2.

this additional data will help make advanced services more readily available to rural consumers.

As OPASTCO stated in its comments earlier in this proceeding, we agree that the Commission needs accurate information in order to make informed decisions.[4] However, there is no requirement in Section 706 that should compel the Commission to seek data at the granular level being proposed.[5] This level of granularity would be costly and difficult for most rural carriers to obtain and would, as OPASTCO warned earlier in this proceeding,[6] hamper their efforts to deploy broadband and high-speed services. Contrary to being essential to fulfill the Commission's obligations, the proposed data collection would thwart the goals of Section 706 itself.

The irony of the proposed expansion of reporting requirements is that they would make it more difficult for providers to deploy service to the very areas the Commission has identified as being "vulnerable" to not having timely access to advanced services.[7] The Commission has declared that encouraging the ubiquitous availability of broadband to all Americans is a "primary policy goal."[8] If the Commission is serious about this

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[4] OPASTCO comments on the Second NPRM in CC Docket No. 99-301 (filed March 19, 2001), pp. 1-2 (OPASTCO comments).

[5] The NPRM contemplates collecting new information, including subscriber counts by zip code, the information transfer rates actually experienced by end users, and specifying the type of technology used to deliver service.

[6] OPASTCO comments, pp. 3-4.

[7] Second NPRM, 16 FCC Rcd 2073, 2081-2082, paras. 2, 21.

[8] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; 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 No. 02-33, CC Docket Nos. 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019, 3021 (2002), para. 3: "*First*, it is the Commission's primary policy goal to encourage the ubiquitous availability of broadband to all Americans" (emphasis in the original).

goal, it must not impose disproportionately burdensome reporting requirements such as those proposed in the NPRM on small rural ILECs. Such requirements would erect another barrier to the further deployment of advanced services in rural areas, contrary to the Act and the Commission's own goals.

III. SUFFICIENT DATA ON BROADBAND DEPLOYMENT BY RURAL CARRIERS IS ALREADY AVAILABLE FROM OTHER SOURCES, AND THE NUMBER OF RURAL CARRIERS REQUIRED TO FILE FORM 477 UNDER THE EXISTING THRESHOLD WILL CONTINUE TO GROW OVER TIME

The Commission seeks comment on whether its current reporting threshold for broadband data of 250 broadband or high-speed connections should be lowered or even eliminated.[9] The NPRM notes that this proposal stems from the Commission's concern that "the current data collection misses several hundred small facilities-based providers, *e.g.,* rural incumbent LECs..."[10] While it is true that some rural ILECs presently fall below Form 477's broadband reporting threshold, the Commission has still been provided with copious data from other sources, which makes it quite simple to discern that rural ILECs are deploying broadband services.

For instance, OPASTCO conducted a survey of its membership in April 2004, which demonstrated that despite significant obstacles, rural ILECs continue to make broadband readily available to the communities that they serve.[11] Among other things, this survey indicated that, 1) 99 percent of respondents are presently offering advanced

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[9] NPRM, para. 10.

[10] *Ibid.*

[11] OPASTCO comments on the *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,* GN Docket No. 04-54, Notice of Inquiry (filed May 10, 2004), pp. 2-5.

services; 2) on average, respondents have been able to make broadband available to 88 percent of their customers; and 3) 55 percent of respondents have made broadband available to at least 95 percent of their customer base.[12] Also, the Commission itself has noted a comprehensive study conducted by the National Exchange Carrier Association (NECA) which found that more than two-thirds of its traffic sensitive access pool members offer broadband via Digital Subscriber Line (DSL) – a figure well above earlier projections.[13] And, a recent National Telecommunications Cooperative Association (NTCA) survey of rural carriers found that 97 percent of respondents presently offer broadband service to some portion of their customer base.[14]

Earlier in this proceeding, the Commission inquired as to whether alternative sources of information are available.[15] Clearly, they are. The surveys and studies cited above may not in each instance reach the level of granularity contemplated by the NPRM, but they certainly provide plentiful information for the Commission to more than adequately fulfill its obligations under Section 706.

In addition, recent data released by the Commission indicates that broadband subscribership continues to grow significantly with each passing year and that DSL – the broadband technology most often deployed by rural ILECs – has the fastest rate of

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[12] *Ibid.*

[13] *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,* GN Docket No. 04-54, Notice of Inquiry, 19 FCC Rcd 5136, 5146, para. 31 (2004), citing *NECA, Fulfilling the Digital Dream: A Report on the Technology of Small and Rural Telephone Companies,* (January 21, 2004), p. 2.

[14] *NTCA 2003 Internet/Broadband Survey Report* (May 2003), p. 3.

[15] Second NPRM, 16 FCC Rcd 2081-2082, para. 21.

growth.[16] The increasing popularity of applications such as Voice over Internet Protocol will no doubt continue to fuel this rapid growth of broadband penetration throughout the nation, rural areas included. Thus, as the take rate for broadband in rural areas increases, more and more rural ILECs will be required to file Form 477 under the existing reporting threshold. Therefore, since sufficient information continues to be available from other sources, and because the number of rural ILECs required to file Form 477 will continue to grow under the existing rules, the current reporting threshold should be maintained.

IV. THE PROPOSED EXPANDED DATA COLLECTIONS WOULD BE COSTLY AND ONEROUS FOR SMALL CARRIERS

The NPRM seeks comment on the accuracy of the Commission's burden estimate for the proposed information collection requirements.[17] The Commission's estimated average burden hours per response for the proposed Form 477 is 15 hours.[18] The burden estimate for the current version of Form 477 is 11 hours.[19] As OPASTCO noted earlier in this proceeding, its members who meet or exceed the current reporting threshold for broadband data indicate that the 11-hour estimate is not accurate.[20] These members estimate that the actual time required to compile all the information currently required ranges from 15 to 20 hours. Thus, it is reasonable to assume that the FCC's burden estimate for the proposed version of the form would also prove to be low for rural ILECs.

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[16] *Federal Communications Commission Report on High-Speed Services for Internet Access,* (rel. June 8, 2004), p. 2.

[17] NPRM, para. 18.

[18] *Local Telephone Competition and Broadband Reporting,* 69 Fed. Reg. 30252, 30268 (2004) (47 CFR Parts 1, 20, and 43).

[19] *See,* Instructions for the Local Competition and Broadband Reporting Form (Form 477) (For Filing Due 3/1/04), p. 1. (Current form available at <http://www.fcc.gov/formpage.html>.)

[20] OPASTCO comments, p. 6.

In any event, based on the Commission's burden estimates for both the existing and the proposed Form 477, the amount of time needed to complete this form will grow by more than one-third if the proposed modifications are adopted.[21] It would be particularly difficult for an increased burden of this magnitude to overcome any reasonable cost-benefit analysis for small ILECs.

As an example of the difficulties the proposed data collections would create for rural ILECs, the NPRM proposes to require broadband providers to report the information transfer rates actually observed by end users.[22] However, rural ILECs primarily provide advanced services using DSL technology, which is sensitive to distance and other physical plant factors which, by nature, vary among end users. This variability means that it would be especially difficult and disproportionately burdensome for rural ILECs to collect this type of information. In light of considerations such as these, the Commission should not expand its data collection beyond what is presently collected from the existing Form 477.

V. IN A COMPETITIVE ENVIRONMENT, THE CONFIDENTIALITY OF REPORTED DATA IS ESSENTIAL FOR SMALL RURAL ILECs

The NPRM seeks comment on whether the Commission could publish carrier data acquired from Form 477 after a year or two without jeopardizing claims of confidentiality.[23] However, this proposal ignores the fact that broadband penetration rates in the rural communities served by small carriers may experience less fluctuation

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[21] The increase in estimated burden hours from 11 to 15 equates to an increase of 36.4 percent.

[22] NPRM, para. 7.

[23] *Ibid.,* para. 12.

from year to year than is seen in larger markets. Rural carriers have small subscriber bases and some have already been able to make broadband available to nearly all of their customers. As a result, these carriers may have take rates that vary less from one year to the next as compared to larger carriers that are still rolling broadband service out. Therefore, while two-year old data might be of limited use to competitors in large markets, it could remain very relevant in smaller markets. Consequently, data should remain confidential over the long term, at least for small, rural carriers.

VI. PAPERWORK REDUCTION ACT AND INITIAL REGULATORY FLEXIBILITY ANALYSIS

As noted earlier, the NPRM proposes exceedingly detailed and costly data collection requirements and seeks comment on the accuracy of its burden estimate. Furthermore, as discussed in Sections II and IV, *supra*, the NPRM never adequately explains the need to collect data at the level of granularity contemplated, especially when sufficient information on rural carriers' broadband deployment efforts is readily available from alternative sources. Nor does it attempt to quantify either the substantial costs to small carriers and their customers, or any anticipated benefits. Before imposing additional reporting requirements on small carriers, or lowering the reporting threshold, the Commission must first conclusively demonstrate that the benefits derived from these rule changes would outweigh their significant costs.[24]

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[24] *See* OPASTCO comments*, Biennial Review 2000 Staff Report*, CC Docket No. 00-175 (fil. Oct. 10, 2000), pp. 5-6: "OPASTCO believes that the unique role played by small, rural [incumbent local exchange carriers (ILECs)] in providing vital services to all consumers in difficult, high-cost environments merits the use of the most stringent possible standards by the Commission when it measures the costs versus the benefits of new regulations. As a general rule, if quantifiable data is not available which clearly demonstrates that the benefits of new regulations outweigh the costs to small ILECs and their customers, then the Commission should refrain from imposing such new regulations on small ILECs."

VII. CONCLUSION

There is no need to collect more granular broadband data from rural ILECs in order to satisfy the obligations of Section 706. Nor should the Commission lower its reporting threshold for broadband data. Instead, the Commission should rely on voluntary reporting and surveys, which provide more than sufficient data on the broadband deployment efforts of rural ILECs. Additionally, company-specific information must continue to remain confidential, at least for small carriers. By minimizing the reporting burdens placed upon rural carriers, the Commission would be adhering to the mandate of Section 706 to reduce barriers to infrastructure investment, thereby encouraging the deployment of advanced services to all Americans, including those living in rural areas.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeffrey W. Smith, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent by first class United States mail, postage prepaid, on this, the 28th day of June, 2004, to those listed on the attached list.

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