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SUMMARY

Commenters in this proceeding agree that Internet Protocol (IP)-enabled services that interconnect with the Public Switched Telephone Network (PSTN) should pay access charges, at least until the Commission's proceeding on intercarrier compensation is complete. Lack of full cost recovery would impede the ability of rural ILECs to continue deploying the broadband capability needed to deliver IP-enabled services. Commenters who declare that IP-enabled services utilizing the PSTN should not be subject to access charges fail to explain how rural ILECs would obtain full cost recovery for the access services they perform.

Commenters also agree that the base of contributors to the Universal Service Fund (USF) should be expanded to include all facilities-based broadband Internet access providers. As the marketplace evolves away from traditional telephony, the Fund's support base is undermined. Voice services are now being offered over broadband platforms, but the underlying broadband access providers are not required to contribute to the Fund. Including all facilities-based broadband Internet access providers as contributors is becoming increasingly critical to maintaining the Fund's sufficiency and stability.

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

In the Matter of)
)
IP-Enabled Services) WC Docket No. 04-36
)

**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) hereby submits these replies in response to comments filed on the Federal Communications Commission’s (Commission or FCC) Notice of Proposed Rulemaking¹ on Internet Protocol (IP)-enabled services. OPASTCO is a national trade association representing approximately 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 OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37). In addition to serving as ILECs, OPASTCO members provide a wide range of other communications services, including dial-up Internet access, broadband, wireless, competitive local exchange, long distance and video.

¹ *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28 (rel. Mar. 10, 2004) (NPRM).

OPASTCO's initial comments in this proceeding explained that IP-enabled services that interconnect with the PSTN should be required to compensate rural ILECs through duly approved access charges, pending the outcome of comprehensive intercarrier compensation reform. Failure to ensure *adequate* compensation for the use of the high-cost networks that rural ILECs build, maintain and upgrade will ultimately result in the degradation of the very infrastructure needed to bring IP-enabled services to rural consumers. Further, IP-enabled services that are functionally equivalent to traditional telephony should be subject to similar service obligations, such as E911 and providing access for the disabled, that rural ILECs fulfill today. In addition to being important to consumers, such service obligations are consistent with the principle of competitive neutrality.

OPASTCO also stated that rural ILECs must retain the option to include their digital subscriber line (DSL) services in revenue pools, regardless of how wireline broadband Internet access services are statutorily classified. Additionally, the base of universal service fund contributors should be expanded to include all facilities-based broadband Internet access providers. Finally, if the Commission asserts federal jurisdiction over IP-enabled services, it must ensure that the process is revenue-neutral for all rural ILECs in all states, without prejudice to a state's rate rebalancing efforts.

These reply comments focus on the need for rural ILECs to receive equitable compensation for the use of their networks through duly approved access charges, pending the completion of the proceeding on intercarrier compensation. These replies also emphasize the benefits of expanding the base of universal service contributors to include all providers that offer broadband Internet access through their own facilities.

II. COMMENTERS AGREE THAT IP-ENABLED SERVICES THAT INTERCONNECT WITH THE PSTN SHOULD BE SUBJECT TO ACCESS CHARGES

Commenters expressed no opposition to the Commission's statement in the NPRM that "the cost of the PSTN should be borne equitably among those that use it in similar ways."² Many commenters also agree with OPASTCO's position that the means by which the costs of the PSTN should be equitably borne in rural service areas is through duly approved access charges.³ OPASTCO and others hold that access charges should be equitably assessed on all applications that use rural ILECs' facilities, without regard to whether or not the service is IP-enabled. This should hold true until the Commission's intercarrier compensation proceeding (CC Docket No. 01-92) is completed and properly accounts for the cost recovery needs and concerns of small, rural ILECs.⁴

The utilization of IP technology to transport voice signals does not reduce an ILEC's cost of providing access services in any way. If IP-enabled services were permitted to obtain access to rural ILECs' networks for free, or at below-cost rates, rural ILECs would unfairly be forced to absorb the costs. Absent full cost recovery, the ability and incentive of rural ILECs to continue upgrading their networks with broadband

² NPRM, paras. 33, 61.

³ OPASTCO, pp. 2-6; *see also, for example*, America's Rural Consortium (ARC), pp. 9-10; CenturyTel, pp. 11-15; Cheyenne River Sioux Tribe Telephone Authority (Cheyenne River), pp. 13-14; Frontier and Citizens Telephone Companies (Frontier-Citizens), pp. 6-7; GVNW Consulting, Inc. (GVNW), pp. 5-7; ICORE Companies (ICORE), pp. 9-13; Interstate Telecom Consulting, Inc. (ITCI), pp. 4-7; Independent Telephone & Telecommunications Alliance (ITTA), pp. 6-7; National Exchange Carrier Association (NECA), pp. 4-13; National Telecommunications Cooperative Association (NTCA), pp. 3-7; Nebraska Rural Independent Companies (Nebraska Rurals), pp. 11-13; Rural Carriers, pp. 3-6; Rural Independent Competitive Alliance (RICA), pp. 3-4; Telecom Consulting Associates (TCA), p. 6; United States Telecom Association (USTA), pp. 31-33; Valor Telecommunications of Texas, L.P. and Iowa Telecommunications Services, Inc. (Valor), pp. 4-8; Western Alliance, pp. 4-8.

⁴ OPASTCO, p. 6.

capability would be seriously impeded. Since a broadband connection is generally necessary for consumers to take advantage of IP-enabled services, insufficient cost recovery would prevent some rural consumers from enjoying the benefits of these services.⁵

The belief that those who use the PSTN in similar ways should provide adequate compensation in an equitable manner is not limited to LECs and the Commission. For instance, the National Association of State Utility Consumer Advocates (NASUCA) declares that:

VoIP providers that utilize the PSTN should have the same obligations as other carriers using the PSTN. Thus, such VoIP providers should be required to pay intercarrier compensation.⁶

Similarly, the National Cable and Telecommunications Association (NCTA) states that IP-based services which are functionally equivalent to standard voice services carry “the obligation to compensate other network providers for the carriage of [their] traffic...”⁷ And, the National Association of Regulatory Utility Commissions (NARUC) declares that IP-based services that are functionally equivalent to traditional telephony should be subject to the same regulatory treatment.⁸ NARUC also correctly notes that VoIP and intercarrier compensation issues are “inextricably linked.”⁹

There are some commenters, however, that claim that access charges should not be assessed on IP-enabled services.¹⁰ These parties, if they offer any explanation at all

⁵ *Ibid.*, p. 5.

⁶ NASUCA, p. 3, *see also* pp. 70-73.

⁷ NCTA, p. 4.

⁸ NARUC, pp. 5-6.

⁹ *Id.*, Appendix A; *see also*, U.S. Small Business Administration Office of Advocacy, pp. 5-6.

¹⁰ *See, for example*, AT&T, pp. 21-28; Illinois Commerce Commission, pp. 9-13; Level3, pp. 3-7; MCI, pp. 44-48; PointOne, pp. 33-35; Pulver.com, pp. 19-20; VON Coalition, pp. 26-27.

regarding how rural ILECs should recover the costs incurred by providing access, suggest that the appropriate cost-recovery mechanism is either bill-and-keep, or reciprocal compensation. Yet none of them offer any evidence that either of these methods reflect rural ILECs' full costs of providing access. Further, they do not explain how rural consumers will be able to obtain access to IP-enabled services if local networks become compromised as a result of the rural ILEC's inability to fully recover their costs.

As NECA astutely observes:

[Those] seeking exemption from intercarrier compensation obligations routinely fail to account for the fact that the services they provide depend on the existence of a reliable, ubiquitous PSTN and the viable carriers that operate it.¹¹

Additionally, if all providers that utilize rural ILECs' networks do not pay for access in a similar manner, regulatory arbitrage will occur. The Commission is rightly concerned that such arbitrage would provide artificial incentives to utilize a specific technology.¹² However, those commenters opposed to assessing access charges on IP-enabled services that utilize the PSTN ignore the Commission's valid misgivings about regulation-induced arbitrage.

Therefore, as OPASTCO stated in its initial comments, the Commission should affirm that IP-enabled service providers that interconnect with a rural ILEC's local network should provide adequate compensation through duly approved access charges, pending the completion of the *Inter-carrier Compensation* proceeding. Furthermore, any

¹¹ NECA, p. 8.

¹² See, *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, FCC 04-97 (rel. Apr. 21, 2004) (AT&T Order), para. 17: "[W]e see no benefit in promoting one party's use of a specific technology to engage in arbitrage at the cost of what other parties are entitled to under the statute and our rules...". See also, *Id.*, Statement of Chairman Michael K. Powell: "To allow a carrier to avoid regulatory obligations simply by dropping a little IP in the network would merely sanction regulatory arbitrage and would collapse the universal service

successor intercarrier compensation regime must treat all service providers that send traffic to local networks in an equitable manner with regard to compensation obligations, regardless of the technologies that they employ.¹³

III. COMMENTERS AGREE THAT THE BASE OF UNIVERSAL SERVICE FUND CONTRIBUTORS SHOULD BE EXPANDED TO INCLUDE ALL FACILITIES-BASED BROADBAND INTERNET ACCESS PROVIDERS

Numerous commenting parties agree with OPASTCO that the FCC should expand the base of contributors to the USF.¹⁴ For instance, MCI concurs with OPASTCO that “all providers of broadband access service should contribute to” the USF.¹⁵ As OPASTCO’s initial comments noted, the marketplace is evolving toward broadband platforms and IP networks. As this continues, the shift away from more traditional telecommunications services will “drain” the support base for universal service, threatening its sufficiency. This impact is even more pronounced when providers offer voice services over broadband platforms that are the functional equivalent of traditional telephony, but the underlying broadband access provider is not required to contribute to universal service. Consequently, the inclusion of all facilities-based broadband Internet access providers as contributors to the USF becomes increasingly critical to maintaining a stable and sufficient USF.

However, a small minority of commenters suggest that the Commission should

system virtually overnight.”

¹³ OPASTCO, p. 6.

¹⁴ *Id.*, pp. 9-13; *see also* CenturyTel, pp. 14-21; Cheyenne River, pp. 14-15; Frontier-Citizens, pp. 6-7; GVNW, pp. 8-9; ICORE, pp. 9-13; ITCI, pp. 8-9; ITTA, p. 11; NASUCA, pp. 67-70; NECA, pp. 13-14; NTCA, pp. 8-13; Rural Carriers, pp. 8-11; RICA, p. 5; TCA, pp. 5-6; USTA, pp. 33-34, 37-38; Valor, p. 12; Western Alliance, pp. 9-10.

¹⁵ MCI, p. 48.

not address the impact of IP-enabled services on universal service “at this time.”¹⁶ Most commenters, including OPASTCO, disagree. As OPASTCO’s initial comments stated, the Commission should expand the base of contributors to include all facilities-based broadband Internet service providers expeditiously. In light of the rapid growth of IP-enabled services, including VoIP, it is most definitely in the public interest that all facilities-based broadband Internet access providers over all platforms be required to contribute without delay.¹⁷

IV. CONCLUSION

Multiple commenters agree that if IP-enabled services are granted free or below-cost access to rural ILECs’ infrastructure, the very networks that bring these services to consumers will be compromised. Therefore, the Commission should clearly state that access charges apply to all IP-enabled services that utilize the networks of rural ILECs, at least until the completion of the *Intercarrier Compensation* proceeding. In addition, it is imperative that all facilities-based broadband Internet access providers be required to contribute to the USF in order to maintain the Fund’s sufficiency, as directed by Congress.

Respectfully submitted,

¹⁶ Cablevision, p. 13; *see also*, VON Coalition, p. 26.

¹⁷ OPASTCO pp. 9-10.

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Certificate of Service

I, Jeffrey W. Smith, hereby certify that copies of OPASTCO's comments were sent on this, the 14th day of July, 2004 by first class United States mail, postage prepaid, or via electronic mail, to those listed below.

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