



OPASTCO

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November 10, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission, Office of the Secretary
445 12th Street, SW
Washington, DC 20554

***Ex Parte* Notice**

RE: In the Matters of:

**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**

**Annual Assessment of the Status of Competition in the Market for the Delivery
of Video Programming
MB Docket No. 04-227**

**A La Carte and Themed Tier Programming and Pricing Options for
Programming Distribution on Cable Television and Direct Broadcast Satellite
Systems
MB Docket No. 04-207**

**Local Telephone Competition and Broadband Reporting
WC Docket No. 04-141**

**Local Competition and Broadband Reporting
CC Docket No. 99-301**

Dear Ms. Dortch:

On November 8, 2004, Allen Hoopes of Silver Star Communications, David Irwin of Irwin, Campbell & Tannenwald, PC, Howard Shapiro of Bennet & Bennet, PLLC, and Stephen Pastorkovich from the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), met with Peggy Greene, Wayne McKee, John

Kiefer, Alison Greenwald, Mike Lance, Priscilla Lee, John Norton, and William Johnson of the Media Bureau; and with Cathy Carpino, Regina Brown, and Narda Jones of the Wireline Competition Bureau.

Commission staff were provided with the attached OPASTCO presentation, which outlines the link between video services and the deployment of broadband in rural areas. The presentation notes that continued broadband deployment in rural areas is a Congressionally-mandated policy goal. While rural local exchange carriers (LECs) have overcome many obstacles to deploying broadband services, many have found that the task is more achievable when broadband offerings are bundled with video services. However, rural LECs encounter significant obstacles to obtaining necessary video content. Specifically, discriminatory costs, punitive retransmission consent arrangements, anti-competitive pricing, and needless data compression restrictions have all impeded rural LEC entry into the video market. Onerous broadband reporting requirements also can impede the delivery of advanced services to rural consumers.

OPASTCO urged the Commission to discourage or prohibit the actions described above. By so doing, the Commission would encourage additional entry into the video market by rural LECs. This would result in more consumer choice, and reduced barriers to investment in broadband-capable infrastructure as called for by section 706 of the 1996 Telecommunications Act. In accordance with Commission rules, this notice and the attached presentation are being filed electronically in the above-captioned dockets.

Sincerely,

/s/ Stephen Pastorkovich
Stephen Pastorkovich
Director of Business Development/
Senior Policy Analyst
OPASTCO

cc: Peggy Greene, Media Bureau
Wayne McKee, Media Bureau
John Kiefer, Media Bureau
Alison Greenwald, Media Bureau
Mike Lance, Media Bureau
Priscilla Lee, Media Bureau
John Norton, Media Bureau
William Johnson, Media Bureau
Cathy Carpino, Wireline Competition Bureau
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O P A S T C O

**Organization for the Promotion and Advancement of
Small Telecommunications Companies**

The Video-Broadband Link

**Presentation to the Wireline Competition Bureau and Media Bureau
November 8, 2004**

ABSTRACT

Increased broadband deployment is a common goal shared by policymakers and industry. Despite many obstacles, notably higher per-customer costs, most rural Local Exchange Carriers (LECs) have deployed broadband to a large portion of their customers.

Rural LECs have found that bundling broadband data services with video increases broadband “take rates” (penetration). This makes deployment of broadband to remaining customers more economically practical.

Rural LECs use increasingly diverse means to deliver broadband data and video services. However, access to content and other challenges are common problems for rural LECs that provide video services.

ABOUT OPASTCO

- OPASTCO is a national trade association of over 560 small, rural telecommunications carriers, including both commercial companies and co-operatives.
- OPASTCO members are “rural telephone companies” as defined in 47 U.S.C. §153(37).
- One half of OPASTCO members are also traditional cable companies.
- Over 90 percent of OPASTCO members serve as ISPs.
- Approximately 85 percent offer high-speed and broadband access.

OPASTCO BROADBAND DEPLOYMENT

As detailed in comments submitted in GN Docket No. 04-54 (filed May 10th, 2004), a survey of OPASTCO members revealed:

- On average, respondents can deliver broadband to 88 percent of customers; 55 percent of respondents can reach 95 percent of their customers, and 28 percent of respondents can reach their entire customer base.
- DSL is used by 99 percent of respondents. In addition, 20 percent also use unlicensed wireless, and 17 percent use coaxial cable. Fiber to the premises is used by seven percent of respondents. Seven percent also use satellite. Licensed wireless is used by four percent.

OPASTCO BROADBAND DEPLOYMENT Cont.

Rural LECs Face Broadband Competition:

- Seventy seven percent of respondents face at least one broadband competitor. Two or more competitors are faced by 38 percent of respondents.

Bundling Increases Penetration:

- The survey's average broadband penetration rate is 13 percent.
- Respondents that bundle broadband with other services average 17 percent penetration.
- Respondents that do not bundle average 10 percent penetration.

RURAL LEC VIDEO SERVICES

Industry changes are leading many more rural LECs to consider video entry. Video allows rural LECs to offer the triple play of voice, video and broadband, which leads to increased broadband penetration. There are anecdotal cases of “triple play” penetration rates of above 50 percent.

As filed in MB Docket No. 04-227 (OPASTCO Reply Comments, Aug. 25th, 2004), estimates from Viodi LLC reveal that:

- Up to 400 rural LECs provide video over varying platforms.
- Up to 120 rural LECs provide video over DSL.
- Up to 40 rural LECs provide video over fiber to the premises.

OBSTACLES TO RURAL LEC VIDEO ENTRY

OPASTCO Reply Comments in MB Docket No. 04-207 (filed August 13th, 2004) and in MB Docket No. 04-227 (filed August 25th, 2004) noted several barriers to entry into the video market faced by small LECS.

- **Discriminatory Cost Of Content:** Content providers appear to charge small companies more on a per-subscriber basis than large companies. However, restrictive non-disclosure provisions prevent accurate comparisons.
- **Punitive Retransmission Consent Agreements:** Content providers often force small companies to carry unwanted channels, or to insert certain channels in specific tiers. Rural providers should have the flexibility to craft tiers that meet the market demands of their small communities.

OBSTACLES TO RURAL LEC VIDEO ENTRY Cont.

- **Anti-Competitive Pricing:** Incidents have been reported where small LECs enter the video market in competition with a large provider. Claiming to conduct a “market test,” the large provider radically lowers rates, but only in the area where the LEC has entered. The complaint process is so onerous as to be of questionable utility.
- **Data Compression Restrictions:** Small LECs entering the video market using DSL technology are at times confronted with data compression restrictions from content providers. Ostensibly imposed for “picture quality” reasons, the restrictions have no technical basis. They appear to be imposed only to burden new entrants.

WHAT THE COMMISSION CAN DO

- Pre-empt non-disclosure terms for content, or at least conduct confidential reviews of rates charged to different providers.
- Require content providers to permit flexible tiering by rural carriers.
- Prohibit baseless “quality control” measures that discriminate against digital technology.
- Streamline the complaint process so that anti-competitive pricing can be effectively reported.
- Avoid imposing burdensome broadband reporting requirements on small LECs (per WC Docket No. 01-141, filed June 28th, 2004).

CONCLUSION

OPASTCO appreciates that both the Wireline Competition Bureau and the Media Bureau are working to find ways to reduce barriers to investment in broadband-capable infrastructure, as instructed by Congress in section 706 of the Telecommunications Act of 1996.

As technology converges, voice and video can be offered over the copper loop, coaxial cable, and fiber optics (in addition to wireless and broadband over power line platforms). OPASTCO stands ready to assist both Bureaus to account for how decisions in their respective dockets can impact rural LECs and their efforts to provide video and broadband services.