

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

In the Matter of)	
)	
Comprehensive Review of Universal Service Fund Management, Administration, and Oversight)	WC Docket No. 05-195
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	
Rural Health Care Support Mechanism)	WC Docket No. 02-60
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Changes to the Board of Directors for the National Exchange Carrier Association, Inc.)	CC Docket No. 97-21
)	

**REPLY COMMENTS
OF THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES
AND THE
WESTERN TELECOMMUNICATIONS ALLIANCE**

I. INTRODUCTION & SUMMARY

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and the Western Telecommunications Alliance (WTA) (jointly “the Associations”)¹ hereby submit these reply comments in

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 more than 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37). WTA is a trade association that was formed by the merger of the Western Rural Telephone Association and the Rocky Mountain Telecommunications

response to the comments filed on the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking in the above-captioned proceedings.² The NPRM seeks comment on ways to improve the management, administration, and oversight of the Universal Service Fund (USF).

In its initial comments, the Associations stated that a widespread, unfocused independent audit requirement for rural ILEC recipients of high-cost support would be a waste of both the carriers' and the government's resources. Like the Associations, several commenters recognize that rural ILECs' financial data is already subject to several layers of review which prevent waste, fraud, and abuse of the high-cost funds that they receive. If the Commission still decides that independent audits of rural ILEC recipients of high-cost support are necessary, they should be targeted using a two-step "screening mechanism" which includes a percentage-based support threshold and a risk identification mechanism. In addition, the Commission should make the costs of any required independent audits an administrative expense of the USF. It should also distinguish between intentional fraud and ministerial error in the course of any audits that are conducted.

Commenters agree with the Associations that both the existing reporting requirements and the distribution process for rural ILEC recipients of high-cost support function well and should remain in place. In particular, there is support in the record for

Association. It represents approximately 250 rural telephone companies operating west of the Mississippi river.

² *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6; *Rural Health Care Support Mechanism*, WC Docket No. 02-60; *Lifeline and Link-Up*, WC Docket No. 03-109; *Changes to the Board of Directors for the National Exchange Carrier Association, Inc.*, CC Docket No. 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) (NPRM).

having the National Exchange Carrier Association (NECA) continue to collect and validate all investment and expense data.

Finally, the Commission should ignore a couple of wireless carrier interests that raise issues related to the cost basis of high-cost universal service support and the designation of eligible telecommunications carriers (ETCs). These issues are either already being considered in another proceeding or have already been addressed by the Commission.

II. RURAL ILECS' FINANCIAL DATA IS SUBJECT TO SEVERAL LAYERS OF REVIEW, MAKING A BROAD INDEPENDENT AUDIT REQUIREMENT UNNECESSARY FOR THESE CARRIERS

In its initial comments, the Associations stated that a widespread, unfocused independent audit requirement for rural ILEC recipients of high-cost support would be a waste of both the carriers' and the government's resources. Like the Associations, several commenters recognize that rural ILECs' financial data is already subject to several layers of review.³ This oversight prevents waste, fraud, and abuse of the high-cost funds that rural ILECs receive and makes an independent audit requirement for these carriers superfluous.

As explained in the Associations' initial comments,⁴ NECA reviews and validates the data submitted by its member companies that is used in universal service support calculations. In addition, the majority of rural ILECs undergo regular audits of their financial statements by independent auditors. Many rural carriers must also submit financial data to their state commission. The FCC should consider these existing

³ GVNW Consulting, Inc. (GVNW), p. 16; National Exchange Carrier Association, Inc. (NECA), pp. 27-28; National Telecommunications Cooperative Association (NTCA), p. 6; United States Telecom Association (USTelecom), pp. 3-4.

safeguards prior to imposing an onerous independent audit requirement on rural ILEC recipients of high-cost support.

However, if despite these multiple layers of oversight, the Commission decides that independent audits of rural ILEC recipients of high-cost support are still necessary, they should be targeted to ensure the most judicious use of carrier and government resources. In its initial comments, the Associations proposed a two-step “screening mechanism” for determining which rural ILECs, if any, would be subject to an independent audit requirement. Under step one, those rural ILECs that receive high-cost support below a threshold of 0.1 percent of the size of the total High-Cost program would be automatically exempt from an independent audit requirement.⁵ Under step two, a risk identification mechanism, to be developed by the Commission, would be applied to those rural ILECs whose high-cost support exceeds the 0.1 percent threshold. An audit requirement would be imposed *only* if the risk identification mechanism indicates that the carrier poses a significant risk of improper conduct. Together, these two “screening tools”-- the percentage-based support threshold and the risk identification mechanism -- would maximize the potential benefit derived from any audits performed on rural ILECs while minimizing any unnecessary burdens imposed on these carriers.

A few commenters oppose the establishment of a threshold support level that would exempt from an independent audit requirement those carriers who fall below it.⁶ These commenters suggest that such a threshold would provide the exempt carriers with

⁴ The Organization for the Promotion and Advancement of Small Telecommunications Companies and the Western Telecommunications Alliance (Associations), pp. 3-5.

⁵ Based on the Universal Service Administrative Company’s (USAC) High-Cost fund size projections for 1st quarter 2006, 148 rural ILEC study areas would exceed a 0.1 percent threshold, which equates to \$1,028,928 in quarterly support. Universal Service Administrative Company, *Federal Universal Service Support Mechanisms Fund Size Projections for First Quarter 2006* (November 2, 2005), Appendix HC01.

an incentive to defraud the High-Cost program. This assertion ignores the oversight and review of rural ILECs' financial data from NECA, independent auditors, and state commissions. These reviews occur without regard to the amount of high-cost support a rural ILEC receives. Thus, rural ILECs whose high-cost support amount is below any threshold the Commission may establish will in no way be incited to commit fraud. On the other hand, potentially subjecting all rural ILEC high-cost support recipients to an independent audit requirement, regardless of the amount of support they receive, would impose administrative costs that far outweigh any benefits.⁷

There is also support in the record for making the cost of any required independent audits an administrative expense of the USF.⁸ As CTIA states, “[i]t is counterproductive to require...telecommunications carriers that are in need of support to pay for independent audits.”⁹ At the very least, high-cost rural ILECs and their customers should not be required to absorb the cost of an independent audit requirement imposed by the Commission. By making the costs of the required audits an administrative expense of the USF, they would be shared by every USF contributor and consumers nationwide. This should encourage the Commission to conduct a serious cost-benefit analysis prior to imposing an independent audit requirement on any rural ILEC.

Also supported by commenters is the need to distinguish between intentional fraud and ministerial error in the course of any independent audits that are conducted on

⁶ Dobson Cellular Systems, Inc. and American Cellular Corporation (Dobson), pp. 17-18; Qwest Communications International, Inc. (Qwest), pp. 37-38; Sprint Nextel Corporation (Sprint Nextel), p. 16.

⁷ As the Commission correctly stated in the NPRM, “...the costs of independent audits could outweigh the benefits in cases where USF recipients only receive a small amount of support.” NPRM, 20 FCC Rcd 11340-11341, ¶77.

⁸ CTIA-The Wireless Association (CTIA), pp. 16-17; Qwest, p. 38.

⁹ CTIA, p. 16.

rural ILEC high-cost support recipients.¹⁰ Rural ILECs that commit small mistakes, typographical errors, or simply fail to correctly interpret complex or unclear rules or procedures should not face the same sanctions as those who commit intentional fraud. Any potential audits of rural ILECs must recognize that neither ministerial error nor negligence rises to the same level as intentional fraud and should not be addressed in the same manner.

III. THE RECORD SUPPORTS MAINTAINING THE EXISTING REPORTING REQUIREMENTS AND DISBURSEMENT PROCESS FOR RURAL ILEC RECIPIENTS OF HIGH-COST SUPPORT

There is support in the record for maintaining the existing reporting requirements for rural ILEC recipients of high-cost support.¹¹ The commenters that address this issue agree that the process works well and should remain in place. In particular, there is support in the record for having NECA continue to collect and validate all investment and expense data.¹² Because high-cost loop data collections are tightly integrated with other rural ILEC cost and demand data that is compiled by NECA, it is most efficient for NECA to continue to collect and validate all data. In addition, NECA provides USAC with the high-cost loop investment and expense data that they receive from rural ILECs.¹³ This data is reviewed for inconsistencies and errors which are resolved prior to NECA providing the data to USAC -- an additional step that ensures the data's accuracy.¹⁴ Therefore, the Commission should not require rural ILECs to provide this investment and expense data to USAC in addition to NECA doing so, as it would be an unnecessarily duplicative administrative burden.

¹⁰ GVNW, pp. 18-19; NECA, p. 29.

¹¹ NECA, pp. 23-27; NTCA, p. 4.

¹² *Id.*

¹³ NECA, p. 25.

The record also supports maintaining separate disbursement processes for the various high-cost support mechanisms.¹⁵ Adopting a single, uniform disbursement process for all of the support mechanisms would needlessly force rate-of-return regulated rural ILECs to expend limited resources to modify their accounting procedures.

IV. THE COMMISSION SHOULD IGNORE CERTAIN RECOMMENDATIONS MADE BY WIRELESS CARRIER INTERESTS THAT ARE NOT GERMANE TO THE FOCUS OF THIS PROCEEDING

A couple of wireless carrier interests have decided to use this proceeding to raise issues concerning the cost basis of high-cost universal service support and the designation of ETCs. These issues are either already being considered in another proceeding¹⁶ or have already been addressed by the Commission.¹⁷ They are certainly not germane to the issues being considered in the instant proceeding, which concerns the management, administration, and oversight of the USF, and should therefore be ignored.

In any event, CTIA and Dobson suggest that high-cost support for all ETCs be based on the forward-looking cost of the “most efficient” technology.¹⁸ As OPASTCO has explained in the appropriate proceedings,¹⁹ basing rural ILECs’ high-cost support on forward-looking economic cost (FLEC) estimates would seriously inhibit their investment in network infrastructure since FLEC estimates are based on a hypothetical network and bear no relationship to the costs that rural ILECs actually incur.

¹⁴ *Id.*, p. 26.

¹⁵ Alexicon Telecommunications Consulting (Alexicon), p. 14; Bellsouth Corporation (Bellsouth), p. 16.

¹⁶ *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission’s Rules Relating to High-Cost Universal Service Support*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 16083 (2004).

¹⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (ETC Designation Order).

¹⁸ CTIA, p. 9; Dobson, p. 9.

¹⁹ OPASTCO Comments in CC Docket No. 96-45 (fil. Oct. 15, 2004), pp. 7-11; OPASTCO Reply Comments in CC Docket No. 96-45 (fil. Dec. 14, 2004), pp. 8-14; OPASTCO Reply Comments in CC Docket No. 96-45 (fil. Oct. 31, 2005), pp. 11-13.

Furthermore, basing support on the “most efficient” technology fails to acknowledge that just because a carrier providing service using one technology has higher costs than a carrier providing service through another technology does not necessarily make the first carrier or technology less efficient. Such a presumption fails to take into consideration stark differences in the quality and reliability of the services provided, the degree of ubiquity of the carriers’ services, the size and nature of the area being served, and the regulatory obligations imposed on each carrier.

Dobson also suggests that the Commission set a goal that consumers in rural and high-cost areas have access to service from no fewer than three ETCs.²⁰ It cites section 214(e)(2) of the Communications Act and asserts that this statutory language provides a “clear mandate” for the designation of multiple ETCs in all instances.²¹ However, Dobson completely ignores the fact that the Commission has already decided the issue of multiple ETC designations in the recent ETC Designation Order.

To begin with, the ETC Designation Order acknowledged that section 214(e)(2) of the Communications Act treats rural and non-rural service areas differently with respect to additional ETC designations.²² Based on these differences in the statutory language, the Commission found that “...in performing the public interest analysis, the Commission and state commissions may conduct the analysis differently, or reach a different outcome, depending on the area served.”²³ It also stated that “...the same or similar factors could result in divergent public interest determinations, depending on the

²⁰ Dobson, p. 13.

²¹ *Id.*, p. 12.

²² ETC Designation Order, 20 FCC Rcd 6390, ¶43. Specifically, section 214(e)(2) says that state commissions “may” designate more than one ETC in rural telephone company service areas as opposed to “shall” for all other service areas. It also requires state commissions, before designating an additional ETC in a rural telephone company service area, to first find that such designation is in the public interest.

²³ *Id.*

specific characteristics of the proposed service area, or whether the area is served by a rural or non-rural carrier.”²⁴ Moreover, the Commission determined that “...in light of the numerous factors it considers in its public interest analysis, the value of increased competition, by itself, is unlikely to satisfy the public interest test.”²⁵ Thus, the Commission has definitively decided how public interest determinations for ETC applicants should be conducted and there is no valid reason to revisit the issue.

V. CONCLUSION

The record in this proceeding does not support a broad independent audit requirement for rural ILEC recipients of high-cost support. Like the Associations, several commenters recognize that rural ILECs’ financial data is already subject to several layers of review which prevent waste, fraud, and abuse of the high-cost funds that they receive. The record also supports maintaining both the existing reporting requirements and the distribution process for rural ILEC high-cost support recipients. Finally, the Commission should ignore comments from a couple of wireless carrier interests that address issues that are not germane to the management, administration, and oversight of the USF.

²⁴ *Id.*

²⁵ *Id.*, 20 FCC Rcd 6390-6391, ¶44.

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Certificate of Service

I, Brian Ford, hereby certify that copies of OPASTCO and WTA's comments were sent on this, the 19th day of December, 2005 by first class United States mail, postage prepaid, or via electronic mail, to those listed on the attached sheet.

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