

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

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

**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)<sup>1</sup> hereby submits these comments in response to the Notice of Proposed Rulemaking (NPRM) in the above-captioned proceedings.<sup>2</sup> The NPRM seeks comment on, among other things, how to define the statutory term “sufficient” as it relates to the high-cost universal service support mechanism for non-rural carriers. The NPRM also seeks comment on a new interim support mechanism for non-rural insular areas and its potential affect on the Universal Service Fund.

Regardless of how the Commission defines the statutory term “sufficient” in this proceeding, it must make clear that this definition applies *exclusively* to non-rural

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<sup>1</sup> OPASTCO is a national trade association representing over 550 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).

<sup>2</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *High-Cost Universal Service Support*, WC Docket No. 05-337, Notice of Proposed Rulemaking, FCC 05-25 (rel. Dec. 9, 2005) (NPRM).

carriers. What may be “sufficient” high-cost support for non-rural carriers to achieve the statutory objectives of affordable and reasonably comparable services and rates in their rural areas will almost surely be insufficient for rural ILECs to accomplish these same objectives. Rural ILECs and non-rural carriers have substantial market and operational differences that the Commission recognized when it created separate support mechanisms, and these differences also demand separate definitions of what constitutes “sufficient” support.

In addition, should the Commission decide to adopt a new interim support mechanism for non-rural insular areas, that mechanism, and any indexed cap that may be imposed on it, should be entirely separate from the existing rural high-cost support mechanism and its indexed cap. This would avoid the possibility of the new mechanism negatively affecting the amount of support received by rural ILECs, to the detriment of their subscribers.

## **II. THE COMMISSION SHOULD MAKE CLEAR THAT THE DEFINITION OF “SUFFICIENT” ADOPTED IN THIS PROCEEDING APPLIES EXCLUSIVELY TO NON-RURAL CARRIERS**

In the NPRM, the Commission seeks comment on, among other things, how to reasonably define the statutory term “sufficient” in light of the holdings of the 10<sup>th</sup> Circuit Court of Appeals in *Qwest Corp. v. FCC (Qwest II)*.<sup>3</sup> *Qwest II* remands the FCC’s October 27, 2003 Order on Remand,<sup>4</sup> which modified the Commission’s high-cost support mechanism for *non-rural carriers*. Thus, in seeking comment on the definition of “sufficient,” it is entirely appropriate that the Commission has done so only for the

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<sup>3</sup> *Qwest Corp. v. FCC*, 398 F.3d 1222 (10th Cir. 2005).

<sup>4</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559 (2003) (Order on Remand).

purposes of the non-rural high-cost support mechanism.<sup>5</sup> This is a critical distinction, because what may be “sufficient” high-cost support for non-rural carriers to achieve the statutory objectives of affordable and reasonably comparable services and rates<sup>6</sup> in their rural areas will almost surely be insufficient for rural ILECs to accomplish these same objectives.

Rural ILECs and non-rural carriers have substantial market and operational differences that demand separate high-cost support mechanisms and definitions of what constitutes “sufficient” support. For instance, non-rural carriers are some of the nation’s largest corporations and the rural territories that they serve comprise just a very small portion of their total service areas. These characteristics enable non-rural carriers to offer affordable and reasonably comparable services and rates to their rural territories with minimal levels of high-cost support through a mechanism based on forward-looking economic costs (FLEC) and statewide average costs.

Rural ILECs, in stark contrast, are small and mid-size carriers that serve only a small fraction of the lines served by the largest non-rural carriers. Their territories are, in most cases, entirely *rural* and lack the large, low-cost urban centers that enable non-rural carriers to counterbalance the cost of serving their high-cost customers. As a result, rural ILECs will necessarily require a greater level of explicit high-cost funding than their non-rural counterparts to achieve the statutory universal service objectives in a particular high-cost area. Furthermore, as OPASTCO has documented extensively in previous

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<sup>5</sup> The NPRM states “[w]e seek comment on how the Commission should balance all seven principles in section 254(b) of the Act in defining the term “sufficient” for purposes of the non-rural high-cost support mechanism.” NPRM, ¶ 8.

<sup>6</sup> 47 U.S.C. §254(b)(1), (3).

comments,<sup>7</sup> the significant differences between rural and non-rural carriers would make a mechanism that utilizes FLEC and/or statewide average costs entirely inappropriate for rural ILECs and would greatly jeopardize the provision of universal service in these service areas.

In its implementation of section 254(b) of the Telecommunications Act of 1996 (1996 Act), the Commission wisely established separate and distinct high-cost support mechanisms for rural ILECs and non-rural carriers. The Commission acknowledged in the Rural Task Force Order that “[i]n implementing the universal service provisions of the 1996 Act, the Joint Board and the Commission have consistently recognized that rural carriers face diverse circumstances and that ‘one size does not fit all’ in considering universal service support mechanisms that are appropriate for rural carriers.”<sup>8</sup> As a result, when the Commission previously defined the term “sufficient” in its Order on Remand, it made certain to articulate that its definition was strictly “...for the purposes of the non-rural mechanism...”<sup>9</sup> It is essential for the Commission to continue to make this distinction in the Order that results from this proceeding.

The existing rural high-cost support mechanism has been highly successful in enabling rural ILECs to offer services, including advanced services, that are reasonably

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<sup>7</sup> OPASTCO Reply Comments in CC Docket No. 96-45 (June 3, 2003), pp. 11-13; OPASTCO Comments in CC Docket No. 96-45 (Oct. 15, 2004), pp. 7-11, 21-22; OPASTCO Reply Comments in CC Docket No. 96-45 (Dec. 14, 2004), pp. 8-14, 24; OPASTCO Comments in CC Docket No. 96-45 (Sept. 30, 2005), pp. 11-13; OPASTCO Reply Comments in CC Docket No. 96-45 (Oct. 31, 2005), pp. 11-14.

<sup>8</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers*, CC Docket No. 00-256, Report and Order, 16 FCC Rcd 11244, 11247, ¶ 4 (2001) (Rural Task Force Order). *See also*, *Federal-State Joint Board on Universal Service*, Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 16 FCC Rcd 6165, 6177 (2000) (“The evidentiary record assembled by the Task Force clearly supports a conclusion that a ‘one-size-fits-all’ national universal service policy is unlikely to be successful in fulfilling the national universal service principles contained in the 1996 Act.”).

<sup>9</sup> Order on Remand, 18 FCC Rcd 22581, ¶ 36. *See also*, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 17 FCC Rcd 20716, 20723-20724, ¶ 15 (2002).

comparable to those offered in urban areas and at affordable and reasonably comparable rates. Were the Commission to apply to rural ILECs the definition of “sufficient” that it adopts in this proceeding, it is highly likely that it would threaten their ability to continue investing in network infrastructure and place upward pressure on local rates. As a result, the statutory universal service objectives would no longer be achieved in these areas. Therefore, regardless of how the Commission decides to define “sufficient” in response to Qwest II, it needs to be made clear that the definition applies *exclusively* to non-rural carriers.

**III. A NON-RURAL INSULAR HIGH-COST SUPPORT MECHANISM SHOULD BE ENTIRELY SEPARATE FROM THE RURAL HIGH-COST SUPPORT MECHANISM, INCLUDING A SEPARATE CAP**

In the NPRM, the Commission tentatively concludes that it should adopt a new interim support mechanism for non-rural insular areas based on embedded costs.<sup>10</sup> Should the Commission decide to adopt such a mechanism for non-rural insular areas, it is essential that it not have the potential to negatively affect the high-cost support received by rural ILECs under the existing rural support mechanism. Certainly, a new mechanism designed to enable the achievement of the statutory universal service objectives in non-rural insular areas should not have the unintended consequence of hindering the achievement of those same objectives in rural service areas. Therefore, in order to avoid such unintended consequences, the adoption of a non-rural insular support mechanism should be entirely separate in all respects from the existing rural high-cost support mechanism.

In particular, should the Commission decide to subject the non-rural insular mechanism to an indexed cap, that cap should be separate from the indexed cap imposed

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<sup>10</sup> NPRM, ¶¶ 30-38.

on the rural high-cost support mechanism. Were the same cap to be used for both mechanisms, it could negatively affect the high-cost support available for rural ILECs, to the detriment of their subscribers. The Commission should not adopt a mechanism that would disadvantage customers in rural ILEC territories in the process of providing additional assistance to subscribers in non-rural insular areas. A separate non-rural insular high-cost support mechanism, including a separate cap, would provide additional support to these areas while maintaining sufficient and predictable support for rural service areas as required by section 254 of the 1996 Act.

#### **IV. CONCLUSION**

The Commission should make clear that the definition of “sufficient” adopted in this proceeding applies *exclusively* to non-rural carriers. Rural ILECs and non-rural carriers have substantial market and operational differences that necessitate separate and distinct systems with different definitions of “sufficient.” Were the Commission to apply to rural ILECs its definition of “sufficient” for non-rural carriers, it would almost certainly threaten their ability to continue achieving the statutory universal service objectives of affordable and reasonably comparable service and rates.

Furthermore, should the Commission decide to adopt a new interim support mechanism for non-rural insular areas, it should be separate in all respects from the existing rural high-cost mechanism, including a separate indexed cap. Additional support for non-rural insular areas should not reduce the high-cost support received by rural ILECs and jeopardize the provision of universal service in rural service areas.

Respectfully submitted,

**ORGANIZATION FOR THE PROMOTION  
AND ADVANCEMENT OF SMALL  
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March 27, 2006

**Certificate of Service**

I, Brian Ford, hereby certify that copies of OPASTCO's comments were sent on this, the 27<sup>th</sup> day of March, 2006 via electronic mail, to those listed on the attached sheet.

By: /s/ Brian Ford  
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**Service List**  
**CC Docket No. 96-45**  
**WC Docket No. 05-337**  
**FCC 05-205**

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