

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Establishing Just and Reasonable Rates)	WC Docket No. 07-135
For Local Exchange Carriers)	
)	

COMMENTS OF
TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

TSTCI offers these comments in response to the Notice of Proposed Rulemaking (NPRM)¹ issued by the Federal Communications Commission (Commission) with regard to establishing just and reasonable rates for local exchange carriers. TSTCI is an association representing 40 small, rural incumbent telephone companies and cooperatives in Texas (see Attachment I).

Background

First, TSTCI would like to point out certain facts about its membership that are relevant to the issues being discussed in this proceeding. All TSTCI member companies, except one, are members of the NECA tariff,² and all but two TSTCI member companies³ receive their revenue requirement settlements from NECA on the basis of costs.⁴ TSTCI contends this data is fairly typical of small, rural ILECs, and TSTCI provides this data to put the access stimulation issues in perspective for the rural ILEC industry. The fact is most small ILECs are NECA tariff participants and most are cost-based companies.⁵ As a result, most of the questions and issues raised in the instant NPRM do not relate to most TSTCI member companies and the majority of small rural ILECs. TSTCI is concerned, however, that the actions of a few “bad players” may result in unintended consequences and administrative burdens for all the small ILECs. Further,

¹ *Notice of Proposed Rulemaking In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, FCC 07-176 (rel. October 2, 2007) (NPRM).

² National Exchange Carrier Association, Access Services Tariff, F.C.C. No. 5, Issuing Carriers.

³ Universal Service Administrative Company, first Quarter Appendices 2007, High Cost Support projected by State by Study Area, 1Q2007, HC01 (website).

⁴ Cost companies receive pool revenues (settlements) for interstate telecommunications services based on their actual interstate investment and expenses, calculated each year from detailed cost studies. (National Exchange Carrier Association website)

⁵ In 2006, out of a total of 1,249 rural ILEC study areas, 491 were average schedule and 758 were cost (Universal Service Administrative Company, *2006 Annual Report*, page 13).

TSTCI is concerned that the Commission's focus on this issue, while understandable to a degree, has overshadowed other issues that are of far greater importance to the small ILEC industry.

As stated earlier, most small ILECs meeting the definition of rural⁶ are NECA participants whose interstate revenue requirement is determined on the basis of cost. Cost companies participating in the NECA tariff have absolutely no incentive to engage in traffic stimulating activities. For the most part, the traffic factors of these companies are frozen, and they remit all their billed interstate access revenues to the NECA pool. Pool members share all revenues earned in excess of the allowed rate of return. While the NPRM acknowledges these facts,⁷ TSTCI would like to emphasize that the access stimulating activities discussed in the NPRM are not a widespread or common practice of small, rural ILECs.

While access stimulating activities and the associated tariff issues are areas of concern to the Commission and the large carriers, there are other very pressing issues of far greater concern to the rural ILEC industry that require the Commission's attention. In particular, TSTCI has joined with other ILEC industry representatives to urge the Commission to resolve the phantom traffic issue by implementing call signaling rules in a manner that allows appropriate billing and compensation of intercarrier compensation. In addition, TSTCI urges the Commission to address the issue of Voice over Internet protocol (VoIP) providers that refuse to pay terminating access to ILECs. TSTCI contends that these issues pose a much more serious threat to the economic viability of the rural ILEC industry than the access stimulating activities of a few companies pose to the economic viability of the large companies raising these issues. TSTCI hopes the Commission will keep this perspective in mind when making decisions on the issues raised in this NPRM.

Request for a More Complete Record

With regards to the Commission's request in paragraph 13 of the NPRM for a more complete record of these activities, TSTCI has no information to share with the Commission on the prevalence of access stimulating activities in Texas and the particular arrangements between companies engaged in such activities. Moreover, TSTCI does not have knowledge of such activities in Texas. TSTCI member companies have been asked to share information about

⁶ 47 C.F.R. §51.5.

⁷ NPRM, paragraph 6.

these activities if they have any information or knowledge, and TSTCI has not received any information from member companies about the prevalence of these activities in their rural service areas. To TSTCI's knowledge, there has not been any complaint proceedings regarding access stimulation activities brought against Texas ILECs. TSTCI concludes that access stimulation is not an issue in Texas.

Revenue Sharing or Other Compensation

The NPRM tentatively concludes that a rate of return carrier that shares revenue or provides other compensation to an end user customer or directly provides the stimulating activity and bundles these costs with access is engaging in an unreasonable practice that violates section 210(b) and the prudent expenditure standard.⁸ The NPRM further states that "it is possible that a carrier could pay some form of compensation to a provider of stimulating activity and not include the compensation in its access costs."⁹ The NPRM asks for comments on this issue and "whether, if the costs are not included in revenue requirements, the Commission has satisfied its obligation to ensure that just, reasonable, and non-discriminatory rates are maintained."¹⁰ Further, the NPRM states that "AT&T has urged the Commission to find such payments to be unlawful in violation of section 201, 202, and 203 of the Act."¹¹

TSTCI contends that compensation for business arrangements that are not included in the carrier's revenue requirement should not be subject to Commission review of whether a carrier's rates are just, reasonable and non-discriminatory. TSTCI finds no justification for making the carrier's non-regulated costs or expenditures subject to Commission review of its rates, and TSTCI does not see how or why non-regulated costs or expenditures would have a bearing on whether a carrier's rates were reasonable. If the Commission adopted AT&T's proposal, the result would constitute a very obtrusive and unreasonable form of regulation.

Further, there may be instances where small ILECs desire to engage in activities or business arrangements designed to attract high volume customers to their service areas. Attracting business customers such as call centers is an important economic development issue for rural service areas. If the Commission were to reach such a conclusion as contemplated by AT&T,

⁸ NPRM, paragraph 19.

⁹ NPRM, paragraph 20.

¹⁰ NPRM, paragraph 20.

¹¹ NPRM, paragraph 20.

that could have the effect of stifling rural companies from proactively trying to attract high volume customers to their service area. TSTCI contends that this potential result would be very harmful to rural ILECs and is certainly not warranted given the concerns being addressed.

In addition, TSTCI would point out that such practices have been fairly common in the LEC industry in the past, especially among the large LECs. Large LECs in the past typically engaged in special arrangements with businesses. TSTCI could conceive of somewhat similar circumstances where small ILECs desire to attract large users of telecommunications services to their service areas. For example, a small ILEC might want to pay travel expenses for a call center operator to visit its facilities and service area or a small company might want to pay part of the cost of relocating a call center to its service area. If these expenses were not part of the company's revenue requirement, TSTCI does not see how this type of common business practice could be considered to result in unlawful or unjust rates if it could be construed as providing compensation to an end-user customer. As described in paragraph 19, such reasonable and prudent business activities on the part of a rural ILEC would be considered an unreasonable practice in violation of section 201(b) and the prudent expenditure standard if this tentative conclusion is adopted.¹²

Tariff Trigger Mechanism

The NPRM tentatively concludes that the Commission should have the opportunity to review the relationship between rates and average costs when a section 61.38 or 61.39 carrier experiences significant increases in traffic.¹³ The NPRM seeks comment on the concept of using a minutes of use (MOU) trigger to stimulate a review of a carrier's rates. The NPRM further requests comment on incentives of NECA members to stimulate traffic and the steps to address possible traffic stimulation by NECA carriers.¹⁴

As stated earlier in these comments, the majority of NECA companies receive their revenue requirement on the basis of costs and have no incentive to stimulate traffic. However, NECA participants that receive their revenue requirement on the basis of average schedule formulas could receive more compensation depending on their access usage. Given the potential for abuse of average schedule formulas by stimulating access MOU as well as the potential for carriers

¹² NPRM, paragraph 19.

¹³ NPRM, paragraph 21.

¹⁴ NPRM, paragraph 21.

filing tariffs under sections 61.38 and 61.39 “to game the system” by stimulating traffic, TSTCI contends that some form of MOU trigger may be useful to assist the Commission’s review of access tariffs.

If the Commission decides to require use of the trigger mechanism concept, TSTCI urges the Commission to take into account the special circumstances of small companies when determining what is a reasonable trigger level. For example, the access MOU of small ILECs does not vary significantly from month to month, and a 30% increase in MOU for a company that generates 100,000 MOU per month would be 30,000 MOU -- hardly a significant amount of usage and probably reflecting normal business fluctuations, whereas for a company generating 10 million MOU per month, a 30% increase would be 3 million MOUs, a fairly significant amount of usage. Given these considerations, TSTCI suggests that if the Commission wished to adopt a trigger mechanism to review access rates, a sliding scale and banded approach would be appropriate to take into account the vast differences between ILECs. TSTCI offers the following percentages as an example of reasonable trigger levels that would take into account the vast differences in ILECs:¹⁵

Monthly Access MOU	Change in MOU Review Trigger
< 100,000	200%-300%
100,000 - 1 million	100%
1 million - 10 million	50%
> 10 million	25%

With regards to the NPRM’s request for comment on the appropriate measurement time period, TSTCI contends that it would be reasonable to use a 12 month rolling average of monthly access MOU data. Use of a rolling average would provide a more reasonable picture of a company’s usage and neutralize seasonal and temporary spikes in usage.

¹⁵ The suggested trigger levels are based on the judgment of professionals familiar with small ILEC access MOU data.

With respect to the NPRM's request for comment on whether the Commission should establish different trigger points depending on whether the traffic is endogenous or exogenous,¹⁶ TSTCI contends that adopting such a complex trigger mechanism would make compliance unnecessarily complicated and difficult for carriers. For example, would a large business customer moving to a carrier's area be classified as an endogenous or exogenous event? TSTCI contends developing such specific classifications of the trigger mechanism would make compliance and enforcement unnecessarily onerous.

Other Enforcement Issues

The NPRM seeks comment on requiring section 61.39 carriers to file a certification with their tariff filings.¹⁷ TSTCI does not oppose adopting this type of certification requirement or other type of enforcement measure that would not be unduly burdensome on the LECs. In addition, TSTCI does not oppose the suggestion in paragraph 28 that the Commission adopt a rule providing that by filing under section 61.39, a carrier is certifying that its use of historical average schedule settlement data to establish rates is a reasonable proxy for future costs.¹⁸ TSTCI suggests that the review trigger percentages proposed earlier in these comments could be used to define what constitutes significant operational changes that could materially affect the reasonableness of a company's rates.¹⁹ TSTCI contends it is important that any new requirements adopted by the Commission be as simple and straightforward as possible to minimize the costs of compliance and to accommodate legitimate increases in MOU due to economic development efforts in a rural area.

Summary and Conclusion

TSTCI understands and appreciates the Commission's desire to address access stimulation issues to prevent future abuses of the access tariff filing process. However, TSTCI contends that actual cases of access stimulation by small ILECs are few and far between. As stated earlier, most small ILECs are cost companies participating in the NECA tariff, and these companies have no incentive to engage in schemes that artificially increase their access usage since their revenue

¹⁶ NPRM, paragraph 22.

¹⁷ NPRM, paragraph 27.

¹⁸ NPRM, paragraph 28.

¹⁹ NPRM, paragraph 28.

requirement would not be affected. TSTCI respectfully urges the Commission to focus its resources on issues that are of great concern to the rural ILEC industry, particularly the phantom traffic issue and VoIP providers' refusal to pay compensation for terminating access.

While TSTCI does not oppose the Commission adopting reasonable requirements for strengthening the tariff review process and for preventing unreasonable traffic stimulation practices such as the trigger mechanism concept or the tariff certification requirement discussed in these comments, TSTCI contends it is vital that any new requirements not have the effect of hindering rural ILEC efforts to attract new business to their service areas. TSTCI is concerned that the large carriers' intent to crack down on access stimulation schemes may result in new regulations that are unduly burdensome for small companies and that stifle rural companies legitimately seeking to attract new business to their areas. Such a result would be harmful to both rural ILECs and the rural customers they serve.

TSTCI appreciate the opportunity to file comments on these issues.

Respectfully submitted,

A handwritten signature in black ink that reads "Cammie Hughes". The signature is written in a cursive, flowing style.

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TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

Alenco Communications, Inc.
Big Bend Telephone Company, Inc.
Brazos Telecommunications, Inc.
Brazos Telephone Coop., Inc.
Cameron Telephone Company
Cap Rock Telephone Coop., Inc.
Central Texas Telephone Coop., Inc.
Coleman County Telephone Coop., Inc.
Colorado Valley Telephone Coop., Inc.
Comanche County Telephone Company, Inc.
Community Telephone Company, Inc.
Cumby Telephone Coop., Inc.
Dell Telephone Coop., Inc.
E.N.M.R. Telephone Coop., Inc.
Eastex Telephone Coop., Inc.
Electra Telephone Company
Etex Telephone Coop., Inc.
Five Area Telephone Coop., Inc.
Ganado Telephone Company, Inc.
Hill Country Telephone Cooperative, Inc.
Industry Telephone Company, Inc.
La Ward Telephone Exchange, Inc.
Lake Livingston Telephone Company
Lipan Telephone Company
Livingston Telephone Company
Mid-Plains Rural Telephone Coop., Inc.
Nortex Communications, Inc.
North Texas Telephone Company
Panhandle Telephone Coop., Inc.
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Poka Lambro Telephone Coop., Inc.
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Santa Rosa Telephone Coop., Inc.
South Plains Telephone Coop., Inc.
Tatum Telephone Company
Taylor Telephone Coop., Inc.
Wes-Tex Telephone Coop., Inc.
West Plains Telecommunications, Inc.
West Texas Rural Tel. Coop., Inc.
XIT Rural Telephone Coop., Inc.