

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

In the Matter of

Comments Sought on the Role of the
Universal Service Fund and Intercarrier
Compensation in the National Broadband
Plan

GN Docket Nos. 09-47, 09-51, 09-137

Comments on NBP Notice #19

**COMMENTS OF
THE WASHINGTON INDEPENDENT TELECOMMUNICATIONS ASSOCIATION
AND
OREGON-IDAHO UTILITIES, INC.**

December 7, 2009

These Comments are filed on behalf of the Washington Independent Telecommunications Association (WITA)¹ and Oregon-Idaho Utilities, Inc. and are filed in response to the Federal Communications Commission's ("Commission") November 13, 2009, Public Notice (NBP Notice #19) seeking comment on the role of the universal service fund and intercarrier compensation in the National Broadband Plan. WITA expresses its thanks to the Washington Exchange Carrier Association and the Oregon Exchange Carrier Association for their support in providing information for these Comments.

NBP Notice #19 seeks detailed and comprehensive data concerning individual company's operations, the effects of possible changes to universal service fund support, and intercarrier compensation, revenues and expenses. The information that is sought could be very beneficial in analyzing the issues related to universal service fund mechanisms and intercarrier compensation. However, the time to respond to NBP Notice #19 is so short that it is impossible to provide the detailed information and data requested.

In order to provide some perspective on the issues raised in NBP Notice #19, these Comments will set out two real life examples of construction of platforms that can deliver broadband service and then will address some of the issues in NBP Notice #19 using those examples as the context for consideration of the issues.

¹WITA is a trade association representing the rural incumbent local exchange carriers operating in the State of Washington. Its members include: Asotin Telephone Company d/b/a TDS Telecom, CenturyTel of Cowiche, Inc., d/b/a CenturyLink, CenturyTel of Inter-Island, Inc., d/b/a CenturyLink, CenturyTel of Washington, Inc., d/b/a CenturyLink, Ellensburg Telephone Company d/b/a FairPoint Communications, Hat Island Telephone Company, Hood Canal Telephone Co., Inc. d/b/a Hood Canal Communications, Inland Telephone Company, Kalama Telephone Company, Lewis River Telephone Company, Inc. d/b/a TDS Telecom, Mashell Telecom, Inc. d/b/a Rainier Connect, McDaniel Telephone Co. d/b/a TDS Telecom, Pend Oreille Telephone Company, Pioneer Telephone Company, St. John Co-operative Telephone and Telegraph Company, Tenino Telephone Company, The Toledo Telephone Co., Inc., Western Wahkiakum County Telephone Company d/b/a Wahkiakum West, Whidbey Telephone Company, and YCOM Networks, Inc. d/b/a FairPoint Communications.

I. Broadband Deployment Under Existing Universal Service Fund and Related Mechanisms: Real Life Examples.

State of Washington Example:

St. John Telephone Company² serves the agricultural community of St. John, Washington and the surrounding area. The area consists of approximately 238 square miles and inhabitants experience cold winters and very warm summers. Severe winter storms present challenges in keeping customers in service. There are 623 access lines in this area, which means St. John Telephone Company serves a density of 2.62 access lines per square mile. Obviously, this is a very rural area.

Using a 22 year RUS loan to fund construction, St. John Telephone Company has built fiber to the home (FTTH) to one hundred percent of the customers it serves. The project took three years to complete, finishing this past summer. St. John Telephone Company installed over 200 miles of fiber, buried and encased in conduit. The FTTH project cost \$15,249 per access line to install. Installation required quite a bit of rock sawing, which increased the cost.

Using this fiber, St. John Telephone Company offers two levels of broadband service. The lower level is 1.5 megabits download speed and 768 kilobits upload speed. The second level is 45 megabits download speed and 1.5 megabits upload speed. The current take rate for broadband is in excess of sixty percent. In the town of St. John itself, the take rate is approaching eighty percent.

This project provides a higher level of reliability in voice service and provides a platform that can delivery broadband service. In light of this dual purpose, the project was undertaken

² The legal name for St. John Telephone Company is "St. John Co-operative Telephone and Telegraph Company." This spelling is not a typographical error in these Comments. It is, instead, the way the organic documents creating St. John Telephone Company were filed with the Washington Secretary of State.

with the anticipation that an appropriate level of recovery of the cost of investment would come through existing universal service fund mechanisms.³

State of Oregon Example:

A second example is from the State of Oregon. Oregon Telephone Corporation (OTC) is in the middle of a project to build a FTTH network that will reach one hundred percent of its subscribers. OTC, like St. John Telephone Company, is using a twenty year RUS loan to fund construction. OTC serves 1,630 access lines at densities of 2.83 access lines per route mile and 1.32 access lines per square mile served.

OTC serves five exchanges in north central Oregon. Those exchanges are Bates, Dayville, Unity, Mt. Vernon, and Prairie City. These are largely agricultural and cattle raising communities that can experience very harsh winters and do experience very warm summers. OTC has completed FTTH construction to one hundred percent of the customers in Unity, and will reach one hundred percent of the customers in Prairie City very shortly. All of the town of Mt. Vernon has FTTH and the entire exchange will have FTTH in 2011, as will the Dayville exchange. It is currently expected that the FTTH construction in the Bates exchange will begin in 2011. OTC is using a conduit-based construction approach. OTC reports that its construction cost to date for the project is approximately \$6,589 per access line.

This project will produce a local network that provides a higher level of reliability. It also provides a platform that has the capacity to deliver broadband services.

Because of current limitations on middle mile availability, OTC is able to offer only 1.5 megabit download speed and 768 kilobit upload speed today. When more middle mile transport is available, these services will significantly expand. OTC is searching for affordable middle

³ St. John Telephone Company fully expects to follow the allocation rules for regulated and non-regulated operations.

mile providers or affordable additional bandwidth, but is unable to find the needed bandwidth at the current time.

This project was undertaken in anticipation of being able to recover the appropriate level of construction costs through existing universal service mechanisms.

II. Issues Related to Transitioning the Current Universal Service High-Cost Support Mechanism.

In Section 3 of the NBP Notice #19, a series of questions are asked about transitioning the current universal service high-cost support mechanism to support advanced broadband deployment.

Under Section 3.a., the Commission seeks comment on an option of maintaining the existing universal service program on a transitional basis to support operating expenses of "legacy voice-only networks," but that all new investment would be supported from a new broadband fund. A series of questions are then asked about that option.

In addition, in Section 3.d., the following questions are asked: "Should high-cost broadband funding be limited to supporting a direct one-time reimbursement for new capital expenditures, or should it support both capital and operational expenses? If a new broadband fund did not support broadband operational expenses, how would carriers distinguish between legacy expenses and broadband expenses?"

These Comments will address these two sets of questions. What the examples of St. John Telephone Company in Washington and OTC in Oregon demonstrate is that the existing mechanisms enable carriers to engage in construction of networks that support both voice and broadband. These investment and construction initiatives increase the reliability of voice telecommunications and provide platforms for solid broadband offerings. As stated in Section 3.a., the option being discussed is that the operating expenses of "legacy voice-only networks"

(emphasis supplied) would be supported during a transition period. The point of the two examples described above is that in establishing any transition between the existing universal service mechanisms and any new mechanisms, the Commission should take care that mixed use networks, such as those deployed by St. John Telephone Company and OTC, are not allowed to drop through the cracks. Both voice-only networks and hybrid networks need support.⁴

These Comments should not be construed as meaning reforms to the existing universal service mechanisms should not be made or that a new broadband fund is not worthy of serious consideration. Instead, the point is that many companies have stepped forward to meet national broadband goals using the availability of existing mechanisms. This means the timing for a transition to a new plan needs to be carefully considered. Both St. John Telephone Company and OTC have twenty year RUS loans. Further, there are state commission established ceilings on how quickly plant can be recovered.⁵ As a result, the substantial investment for the FTTH initiatives cannot be recovered in a very short time. Indeed, a flash cut or very short transition could result in defaults on RUS loans used to develop robust broadband capable networks. These Comments recognize that a twenty year transition is not feasible. However, careful consideration should be given to the type of investment decisions that have been made in furtherance of national policies of providing both reliable voice telecommunications and platforms that can deliver broadband service.

As noted in the descriptions of the FTTH projects above, both St. John Telephone Company and OTC have installed FTTH through buried conduit. Both companies expect loop maintenance expenses to decrease significantly. However, OTC has already experienced, and St.

⁴ Indeed, it would be very surprising to find a large number of networks that were truly voice-only. It is a mistake in understanding to assume there are networks where recent investment was for "voice-only networks."

⁵ For example, the Washington Utilities and Transportation Commission places an upper limit on annual fiber cable depreciation at 5 percent per year for buried and 7.11 percent for aerial. Docket UT-961195.

John Telephone Company anticipates experiencing, significant maintenance expenses related to power supply and batteries. Both areas experience dramatic winter storms that can adversely affect power supply. Thus, while some operational expenses can be expected to decrease through proper fiber deployment, operational expenses are not, as perhaps implied in Section 3.d. of NBP Notice #19, going to go away completely.

The idea of a direct one-time reimbursement of new capital expenditures would solve the recovery over time issue that St. John Telephone Company and OTC currently face. If that is the rule that is established for a new fund, carriers can plan accordingly.

However, the idea that all operational expenses should be recovered through means other than universal service support is not one that should be adopted. It would be physically impossible for a carrier like St. John Telephone Company that serves 623 access lines to recover sufficient revenues from its existing customers to cover even reduced maintenance and operational expenses. Nor could OTC produce sufficient revenues from its 1,630 access lines. A network cannot be run for free.⁶ The value of the network disappears if there is no one there to operate it in an efficient and timely basis.

The experiences of St. John Telephone Company and OTC are borne out in recent publications issued by the National Telecommunications Cooperative Association (NTCA). In one publication which was just issued, NTCA provided its 2009 Broadband/Internet Availability Survey Report.⁷ This NTCA Report supports the concept experienced by St. John Telephone Company and OTC that existing universal service mechanisms and availability of funding for construction do allow for the creation of substantial broadband networks. The NTCA Report

⁶ The urban legend that the Internet is free is a fallacy, not a fact.

⁷ This Report is available at www.ntca.org.

states that the respondents to the survey indicated that fifty-nine percent had fiber to the home or fiber to the curb, up from thirty-two percent two years earlier.⁸

The other NTCA publication goes to the availability of middle and second mile access.⁹ In very persuasive analytical terms, NTCA demonstrates that rural carriers face substantial issues related to middle mile availability and NTCA recommends that the Commission recognize that ubiquitous broadband deployment will require some form of middle mile cost recovery for rural providers. As noted above, OTC is experiencing substantial difficulties in obtaining middle mile transport. Further, although St. John Telephone Company was able to provide middle mile transport, the company reports that it was difficult to obtain and is relatively expensive.

While there are other areas in which rural carriers operate, such as near the I-5 corridor in western Washington where there is substantial availability among middle mile providers, it is obvious that in eastern Washington and eastern Oregon, that is not the case. Middle mile support may well be a very important element of the National Broadband Plan.

III. Questions Concerning the Impact of Changes in Current Revenue Flows.

In Section 4 of NBP Notice #19, several questions are asked concerning possible reductions in current levels of universal service high-cost support and intercarrier compensation. The question is asked whether these reductions would, in fact, jeopardize a company's ability to continue to serve customers and advance deployment of next-generation broadband-capable networks. In this section of these Comments, some of the questions posed in Section 4 will be addressed.

⁸ NTCA Report at p. 3.

⁹ November 20, 2009, ex parte filing by NTCA entitled In the Matter of Comment Sought on the Imprint of Middle and Second Mile Access on Broadband Availability and Deployment, NBP Public Notice #11, GN Docket Nos. 09-47, 09-51, 09-137.

Section 4.a. asks what factual analysis should the Commission undertake to test the validity of the arguments about the effect on the ability to continue to serve customers and advance deployment of next-generation broadband-capable networks. One easy test is to look at what percentage of telecommunications revenue are provided through universal service high-cost support and intercarrier compensation. To illustrate this point, data from Hood Canal Telephone Company, d/b/a Hood Canal Communications (HCC) is provided.

[Confidential data redacted.]

This data demonstrates that 80.9 percent of Hood Canal's total telecommunications revenue comes from universal service high-cost support and intercarrier compensation. Of this, 50.2 percent of total telecommunications revenue is derived from intercarrier compensation.¹⁰ Universal service high-cost support contributes 30.7 percent.¹¹ Removing or substantially decreasing either form of support would have an obvious effect on HCC's ability to serve its customers and, in addition, on HCC's ability to deploy next-generation broadband networks. A carrier cannot lose either 30.7 percent or 50.2 percent of its revenue and continue business as usual.

In Section 4.b., the question is posed, "What would be the financial impact of reducing or eliminating high-cost support for carriers in geographic areas where there already is at least one competitor offering broadband (using any technology) today that does not receive any high-cost

¹⁰ As used in this context, intercarrier compensation includes access charges assessed to interexchange carriers, distributions from state and federal access pooling mechanisms and reciprocal compensation.

support?" This question is almost a non-sequitur. The most likely competitor that would be offering broadband that does not receive any high-cost support is a cable television provider. That cable television provider has built a network to provide cable TV. Advances in technology now allow the cable provider to use the same network to provide telecommunications service. The telecommunications service by the cable provider is an incremental or add-on service that does not depend upon the construction of an expensive network to be made available, since the network is already there for another purpose.

Nor does the cable provider typically have a carrier of last resort (COLR) obligation. The cable provider provides telecommunications service only within its cable TV footprint. Under franchising requirements in most localities, that means that the cable provider has no obligation to build facilities outside of certain population densities. In other words, the lower density areas are not being served. On the other hand, the rural local exchange carrier that is providing service in the area is providing service on a ubiquitous basis. The rural local exchange carrier has COLR responsibilities. Often the service is provided at very low densities as identified in the case of the St. John Telephone Company and OTC, discussed above.

The cable networks are often constructed only in the more densely populated city or town in a telecommunications exchange. Thus, competition exists in the easiest, most economical to serve areas. This is the classic "hole in the doughnut" issue. However, support is provided to the telecommunications company on an average cost basis. In other words, the relatively lower cost areas to serve in the town or city are averaged with a higher cost, longer loops in the more rural areas of the rural carriers' service area. Thus, the mere presence of competition in one portion of a rural carrier's exchange does nothing to fully understand the costs of being the COLR and providing service for both voice and broadband throughout the local exchange carrier's service

¹¹ For ease of calculation, Interstate Common Line Support and Local Switching Support are included.

area. Such simple threshold tests of entry of another competitor cannot tell the complete story and could significantly disrupt broadband policies.

SUMMARY

These are very important issues. However, the data-driven questions promulgated in NBP Notice #19 are simply not capable of being completely answered in the time period between November 13, 2009, and December 7, 2009. While these issues deserve, indeed require, careful exploration, there are action items that the Commission can move on that will have substantial benefits, not just universal service funding and intercarrier compensation, but also the National Broadband Plan. These action items include establishing national standards for populating traffic that is delivered for completion on the public switched telecommunications network so that appropriate levels of intercarrier compensation can be assessed. The "phantom traffic" issue is growing very rapidly and traffic signaling rules are a first step in addressing that issue.

In addition, the Commission could move forward to establish a reasonable unified intercarrier compensation rate with a corresponding support mechanism (\$0.0007 is not reasonable or supportable). Third, the Commission can take the step forward of removing the "same support" rule for competitive eligible telecommunications carriers.

Action on these items is long overdue.

Respectfully submitted this 7th day of December, 2009.

By: _____



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