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

In the Matter of	)	
	)	
Preserving the Open Internet	)	GN Docket No. 09-191
	)	
Broadband Industry Practices	)	WC Docket No. 07-52

COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

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SUMMARY

OPASTCO is supportive of codifying the four existing Internet policy principles, as well as codification of principles of nondiscrimination and transparency. However, a nondiscrimination rule should be applied not only to broadband Internet access service providers, but also to all providers of Internet-based content, applications, and services, as well as to providers of Internet backbone access and transport services. These providers often possess greater market power than most rural ILEC broadband providers, and this power can easily be exploited in a manner that is harmful to rural consumers.

For example, some rural broadband providers have reported that ESPN requires them to pay a fee for every one of their subscribers in order to gain access to their ESPN360.com website. Should practices like this be adopted by other content, application, and service providers, it would cripple rural ILECs' ability to make further investments in their networks to improve the reach and quality of their broadband services. In addition, rates for broadband services would need to rise in order to recover at least some of these costs. Neither of these outcomes is beneficial to rural consumers nor consistent with the Commission's goal to make robust, affordable broadband services available throughout the nation. Therefore, a nondiscrimination rule should prohibit content, application, and service providers from charging rural ILEC broadband providers for access to their Internet-based offerings for their customers.

The Commission should also apply a nondiscrimination rule to all providers of access to the Internet backbone and transport services that requires them to price their services to rural ILEC broadband providers in a nondiscriminatory manner. Rural broadband providers often have access to a limited number of providers for these critical

facilities, and thus are often required to purchase access to them in a near monopoly market. Without access to these facilities at reasonable and equitable rates, rural ILECs' ability to offer their customers affordable, high-speed broadband that can accommodate the increasing number of bandwidth-intensive applications and services will be compromised.

The Commission should adopt a general and flexible definition of reasonable network management that allows rural ILEC broadband providers to prioritize the network traffic of certain types of applications and services, so long as it is done in a competitively neutral manner. This is necessary to meet customers' service quality expectations. For example, rural broadband providers may wish to prioritize the traffic from all applications and services with a video component, due to customers' expectations that video should function without interruption, distortion, or buffering. Meeting consumers' service quality expectations is important, because it helps rural broadband providers to retain customers and attract new ones. As a result, rural broadband providers will have an increased ability and incentive to invest in improving the capacity of their broadband networks and extending service to additional rural consumers.

The Commission should also establish a general and flexible definition of "managed" or "specialized" services for which rural ILEC broadband providers may offer an enhanced quality of service for a fee. The common characteristics among many of these services today are that they utilize the same network used to provide broadband Internet access, but they are not accessed or utilized "online" or over the world wide web. To meet consumers' expectations for these services, rural broadband providers need to

provide an enhanced level of service quality on their networks, and it is only fair that they be permitted to charge a fee for the "better than best-effort" service that they are providing. Furthermore, rural ILECs have limited customer bases for Internet access service that cannot be replied upon, by themselves, for recovering the considerable costs of deploying and operating a ubiquitous, high-speed broadband network. Thus, the more opportunities that rural broadband providers have to earn revenue from their broadband networks, the greater their ability and incentive will be to make further network investments that benefit all of their customers. It will also improve their ability to maintain affordable rates for broadband Internet access service.

Finally, the Commission should continue to afford rural ILEC broadband providers flexibility in how they price their broadband Internet access services, including the ability to charge based on bandwidth usage. Usage based pricing can serve as a tool to address network congestion and would also enable rural broadband providers to more closely match their broadband Internet service packages to their customers' bandwidth needs. Furthermore, the ability to charge heavy Internet users an amount that is more commensurate with the costs they impose on the network would help to keep rates for light and moderate users more affordable, which may spur additional broadband adoption and usage.

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I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Notice of Proposed Rulemaking (NPRM)[1] in the above-captioned proceedings. OPASTCO is a national trade association representing approximately 520 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. Almost all of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37).

OPASTCO is supportive of codifying the four existing Internet policy principles, as well as codification of principles of nondiscrimination and transparency. However, a nondiscrimination rule should be applied not only to broadband Internet access service providers, but also to all providers of Internet-based content, applications, and services, as well as to all providers of Internet backbone access and transport services. This is

[1] *Preserving the Open Internet*, GN Docket No. 09-191, *Broadband Industry Practices*, WC Docket No. 07-52, Notice of Proposed Rulemaking, 24 FCC Rcd 13064 (2009) (NPRM).

necessary to restrain the market power of these providers, which can easily be exploited in a manner that harms rural ILECs' ability to invest in the further deployment and improvement of their broadband Internet access services, to the detriment of rural consumers.

The Commission should adopt a general and flexible definition of reasonable network management that allows rural ILEC broadband providers to prioritize the network traffic of certain types of applications and services, so long as it is done in a competitively neutral manner. This is necessary to meet customers' service quality expectations. The Commission should also establish a general and flexible definition of "managed" or "specialized" services for which rural ILEC broadband providers may offer an enhanced quality of service for a fee. The more opportunities rural carriers have to earn revenue from their broadband networks, the greater their ability and incentive will be to make further network investments, to the benefit of all of their customers.

Finally, the Commission should continue to afford rural ILECs flexibility in how they price their broadband Internet access services to end users, including the ability to price based on bandwidth usage. This would enable them to more closely match their broadband service packages to their customers' bandwidth needs and would serve as an additional network management tool to address congestion.

II. THE COMMISSION SHOULD APPLY A NONDISCRIMINATION RULE TO ALL INTERNET-BASED CONTENT, APPLICATION, AND SERVICE PROVIDERS, AS WELL AS PROVIDERS OF INTERNET BACKBONE ACCESS AND TRANSPORT SERVICES

OPASTCO supports codification of the four existing Internet policy principles, as well as codification of principles of nondiscrimination and transparency. However, a nondiscrimination rule should apply not only to broadband Internet access service

providers, but also to all providers of Internet-based content, applications, and services, as well as to all providers of access to the Internet backbone and transport services. These providers possess greater market power than most rural ILEC broadband Internet access providers, and as the actions of a content provider already illustrate, this power can easily be exploited in a manner that is harmful to rural consumers. By applying a nondiscrimination rule to *all* service providers that provide inputs to the broadband Internet access that end users experience, it will better enable rural ILECs to offer robust broadband at affordable rates throughout their service areas, consistent with the Commission's goals.

A. The Commission should prohibit all Internet-based content, application, and service providers from charging rural ILEC broadband providers for access to their offerings

The NPRM discusses at length the manner in which broadband Internet access service providers have the ability to use their market power to discriminate against content, application, and service providers. For instance, the NPRM states that:

> Investing in innovative Internet content, applications, and services is risky, and firms will not invest unless their expected revenues exceed their expected costs. If allowed to do so, broadband Internet access service providers may attempt to extract some of the profit earned by content, application, and service providers by charging them fees for providing access (or prioritized access) to the broadband Internet access service providers' subscribers. These fees will reduce the potential profit that a content, application, or service provider can expect to earn and hence reduce the provider's incentive to make future investments in the quantity or quality of its content, application, or service.[2]

Unfortunately, the NPRM fails to offer any recognition of the market power that content, application, and service providers may possess and their ability to use it in a manner that would severely diminish consumer welfare in rural service areas. In particular, if rural

[2] NPRM, 24 FCC Rcd 13092, ¶68.

ILEC broadband providers are forced to pay for access to Internet-based content, applications, and services, they will have less capital to invest in their broadband networks and there will be significant upward pressure on rates for broadband Internet access service. Neither of these outcomes are beneficial to rural consumers nor consistent with policymakers' goals for affordable, ubiquitous broadband availability throughout the nation.

A video content provider's ongoing abuse of its market power demonstrates OPASTCO's concern. Specifically, numerous OPASTCO members have informally reported that ESPN requires them to pay a fee for every one of their broadband Internet access subscribers in order for their customers to gain access to the ESPN360.com website. This behavior is no different than the potential market power abuse by broadband Internet access service providers which the NPRM seeks to prevent via the proposed nondiscrimination rule.

For example, if a broadband Internet access provider were to offer search engine providers prioritization of their network traffic for a fee, most search engine providers would have little choice but to accept. This is because most Internet users will quickly discover which search engines have the speediest response times and migrate to them, leaving behind any that may have refused to purchase the traffic prioritization.

The fees that ESPN is charging rural broadband Internet access providers places them in exactly the same position. If a rural broadband provider declines to pay ESPN the per-subscriber fee in order to gain access to ESPN360.com, customers of that carrier would be blocked from access to the website's content. In addition, the rural broadband

provider would risk losing customers to competitors[3] that were willing to pay for the exclusive, in-demand content that ESPN360.com makes available.

Were fee arrangements like the ones established by ESPN allowed to proliferate, it would cripple rural ILECs' ability and incentive to make further investments in the deployment and improvement of their broadband services. This is because a significant portion of rural ILECs' financial resources that otherwise would be reinvested in their networks would instead be diverted to paying fees to content, application, and service providers. Eventually, rural ILECs would have little choice but to pass at least a portion of these costs onto their subscribers via higher rates for broadband Internet access. This would likely have a negative effect on "take rates," and even worse, could result in some rural broadband providers discontinuing service.

To begin with, lower income subscribers, who may struggle to afford broadband Internet access service, could be forced off the network as prices increase. Moreover, if the decline in subscribership is severe enough, it could lead rural broadband providers to exit the market. In most cases, rural ILECs are the only broadband providers in their service areas offering wireline service to customers in the more sparsely populated portions of their territories. Therefore, their exit from the market would leave some consumers without any option for high-quality fixed broadband Internet access service.

The NPRM states that broadband Internet access providers imposing fees on content, application, and service providers could reduce consumer welfare more than

[3] In September 2009, OPASTCO conducted a survey of its members regarding the state of the marketplace for broadband Internet access services. Surveys were sent to 243 members, and it was completed by 50 respondents, or just over 20 percent of recipients. The survey results indicate that there is robust competition for broadband Internet access service in many rural service areas. Specifically, 90 percent of respondents indicated that they face competition from *at least* one other non-satellite broadband Internet access service provider, and 61 percent stated that they face competition from two or more.

imposing the same fees directly on end users.[4] Likewise, consumer welfare is also diminished when content, application, and service providers impose fees on rural ILEC broadband providers. Specifically, it hampers rural broadband providers' ability to improve the reach and quality of their broadband services and may also lead to higher end-user rates.

The Commission should therefore adopt and codify a nondiscrimination principle that applies not only to broadband Internet access service providers, but to Internet-based content, application, and service providers as well. Specifically, the nondiscrimination rule should prohibit content, application, and service providers from charging rural ILEC broadband providers for access to their Internet-based products for their customers.[5] This equitable application of the nondiscrimination rule would ensure that rural consumers are able to access and utilize any Internet-based content, application, and service of their choosing, consistent with the four existing Internet policy principles. Equally important, it would further the Commission's objectives for the availability of robust, affordable broadband services throughout the nation.

B. The Commission should prohibit all providers of access to the Internet backbone and transport services from discriminating in their pricing to rural ILEC broadband providers

For rural ILECs, access to the Internet backbone and transport services at reasonable and equitable rates is critical to their ability to offer affordable, high-speed

[4] NPRM, 24 FCC Rcd 13093, ¶70.

[5] In addition to prohibiting content, application, and service providers from imposing fees on rural broadband providers, a nondiscrimination rule should also ban exclusive arrangements between large broadband providers and providers of Internet-based video content. These arrangements are already widespread throughout the market for traditional subscription-based multichannel video services. Should they take hold in the Internet-based video market, it will diminish some rural consumers' access to certain content. It will also harm the ability of rural broadband providers to effectively compete and threaten their subscription rates for broadband, thereby harming incentives for further network investment.

broadband services throughout their rural service areas. Thus, were providers of these facilities and services to discriminate in their pricing, it could harm rural consumers' ability to utilize the wide array of bandwidth-intensive content, applications, and services available over the Internet.

Rural ILECs often have access to a limited number of providers for Internet backbone access and middle-mile transport services. In addition, many of the transport facilities available to rural ILECs lack the capacity to adequately handle traffic generated by higher-bandwidth applications and services. Thus, as rural ILECs seek to upgrade their middle-mile transport to accommodate rural consumers' demands for faster broadband speeds, this will further limit their viable options for these services. Moreover, a number of rural ILECs purchase Internet backbone access and transport services from the very same large, nationwide carriers with whom they compete in both the voice and broadband markets. Consequently, rural ILECs seeking to purchase Internet backbone access and transport services in a near monopoly market could potentially face discriminatory prices for these critical facilities and services.

The Commission should therefore apply a nondiscrimination rule to all providers of Internet backbone access and transport services that prohibits them from discriminating in their pricing to rural ILEC broadband providers. Without access to these critical facilities at reasonable, equitable, and nondiscriminatory rates, rural ILECs' ability to offer affordable, high-speed broadband Internet access that is capable of accommodating the growing number of bandwidth-intensive applications and services will be compromised.

III. THE COMMISSION SHOULD ADOPT A GENERAL, FLEXIBLE DEFINITION OF REASONABLE NETWORK MANAGEMENT THAT GIVES RURAL ILEC BROADBAND PROVIDERS THE ABILITY TO MEET CUSTOMERS' SERVICE QUALITY EXPECTATIONS FOR DIFFERENT TYPES OF APPLICATIONS AND SERVICES

The Commission should adopt a general, flexible definition of reasonable network management that allows rural ILEC broadband providers to do their best to meet customers' service quality expectations for different types of applications and services. Such a definition would allow rural broadband providers to prioritize the network traffic of certain types of applications and services, but only in a competitively neutral manner. This would allow rural broadband providers to offer existing and potential subscribers the best Internet experience possible. In turn, this will help to stimulate demand for broadband Internet access services and incent rural carriers to make further investments in their broadband networks.

The Commission was wise to propose a definition of reasonable network management that is "at a relatively general level."[6] As the NPRM acknowledges, "the novelty of Internet access and traffic management questions, the complex nature of the Internet, and a general policy of restraint in setting policy for Internet access service providers weigh in favor of a case-by-case approach."[7] Likewise, the Commission does not "know now everything that providers may need to do to provide robust, safe, and secure Internet access to their subscribers …,"[8] and a general definition will provide network operators with additional flexibility to experiment and innovate as usage patterns, technologies, and user needs change. Thus, as the NPRM suggests, rural broadband providers should be free to employ practices that appear to fall within the

[6] NPRM, 24 FCC Rcd 13112, ¶134.
[7] *Id*.
[8] *Id*., 24 FCC Rcd 13114, ¶140.

general reasonable network management definition that the FCC establishes without having to first seek a declaratory ruling.[9]

It is particularly important that the definition of reasonable network management allow a rural broadband provider to take reasonable steps to "mitigate the adverse effects of congestion on its network or to address quality-of-service concerns."[10] Among other things, this should allow rural broadband providers to prioritize certain types of traffic so long as it is done in a competitively neutral manner. Prioritization of certain types of traffic is necessary to meet customers' expectations for the various applications and services that they utilize. For example, consumers expect applications and services that contain a video component to function without interruption, distortion, or "buffering." Allowing rural broadband providers to prioritize this type of traffic would help them to provide customers with the best Internet experience possible for the bandwidth capacity that is available to them.

Meeting customers' expectations is important because, as the September 2009 Status Report by the Commission's Broadband Task Force stated, "[t]he utility of the Internet is an important driver of adoption and usage."[11] Therefore, if broadband providers are able to meet consumer expectations for service quality by prioritizing certain types of network traffic, it will help them to retain customers and attract new ones. As a result, rural ILECs will have an increased ability and incentive to invest in improving the capacity of their broadband networks and extending service to additional rural consumers.

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[9] *Id*., 24 FCC Rcd 13112, ¶134.
[10] *Id*., 24 FCC Rcd 13113-13114, ¶137.
[11] FCC Broadband Task Force, *National Broadband Plan Status Report*, p. 19 (rel. Sept. 29, 2009) (September 2009 Broadband Task Force Status Report).

The NPRM's proposal to leave more detailed rulings on reasonable network management to the adjudications of particular cases[12] is sufficient to address any issues that may arise regarding anticompetitive conduct. However, as suggested in the NPRM, it would be useful for the Commission to provide a few examples of what constitutes proper and improper behavior under its general reasonable network management definition in order to give broadband providers a better understanding of what is and is not permissible.[13] For example, the Commission should explain that it is permissible for a broadband provider to prioritize certain types of network traffic over others as it sees fit in order to meet consumers' expectations for how various applications and services should function, so long as it is done in a competitively neutral manner. For instance, the prioritization of traffic from all applications and services with a video component over all email traffic, would be competitively neutral,[14] whereas a broadband network provider only prioritizing the traffic from their own video-based applications and services would not.

In addition, the Commission should consider that its proposed transparency rule[15] can operate as a further check on the pernicious network management practices that the NPRM seeks to prevent. The availability of this information will drive providers to adopt practices that are minimally intrusive and that customers would not find egregious, with the knowledge that to do otherwise may cause them to lose customers to a competitor.[16]

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[12] NPRM, 24 FCC Rcd 13112, ¶134.
[13] *Id*.
[14] As Commissioner McDowell correctly stated, "[d]iscriminatory conduct, in the network management context, does not necessarily mean anticompetitive conduct." *Id*., 24 FCC Rcd 13162, Statement of Commissioner Robert M. McDowell, concurring in part, dissenting in part.
[15] *Id*., 24 FCC Rcd 13108, ¶119.
[16] Most OPASTCO members face competition from at least one other non-satellite broadband Internet access service provider, and the majority face competition from two or more. *See*, fn. 3, *supra*.

Therefore, the Commission should adopt a general, flexible definition of reasonable network management, while leaving more detailed rulings to the adjudications of individual cases. This would give rural broadband providers the flexibility to quickly adjust their network management practices to respond to changes in technology, usage patterns, and consumer demands, thereby empowering them to provide their customers with the best Internet experience possible. As a result, greater broadband adoption, usage, and investment will be promoted.

IV. THE COMMISSION SHOULD ESTABLISH A GENERAL, FLEXIBLE DEFINITION OF MANAGED OR SPECIALIZED SERVICES THAT ALLOWS RURAL ILEC BROADBAND PROVIDERS TO OFFER AN ENHANCED QUALITY OF SERVICE FOR A FEE

The Commission should establish a general, flexible definition of "managed" or "specialized" services for which rural ILEC broadband providers may offer an enhanced quality of service for a fee. The more opportunities that rural ILECs have to earn revenue from their broadband networks beyond their limited customer bases for Internet access service, the greater their ability and incentive will be to make further network investments, to the benefit of all of their customers. Therefore, a general, flexible definition of managed or specialized services would serve the public interest.

The NPRM offers several examples of managed or specialized offerings, such as voice and video subscription services, and telemedicine, smart grid, and eLearning applications.[17] The two common characteristics among these examples are that they utilize the same network that is used to provide broadband Internet access, but they are not accessed or utilized "online" or over the world wide web.[18] However, while these

[17] NPRM, 24 FCC Rcd 13116-13117, ¶¶148, 150.

[18] In addition, some managed or specialized services will traverse only one service provider's network while others will traverse multiple carriers' networks. A service provider can *guarantee* a level of service

characteristics are prevalent among most managed or specialized services today, they may not apply to all of them, and in the future the distinguishing attributes of these services may be different.

Therefore, similar to the NPRM's proposal for defining reasonable network management, managed or specialized services should be defined in a general and flexible manner. This would take into account "the complex nature of the Internet and a general policy of restraint in setting policy for Internet access service providers …."[19] Rural broadband providers should be free to charge a fee for enhanced quality of service for any application or service that appears to fall within the Commission's generalized definition. If the need arises, the Commission can always make more detailed rulings on whether a particular service or group of services qualifies as managed or specialized in future adjudications.

The FCC appears to recognize that managed or specialized services often require or benefit from an enhanced quality of service that goes beyond traditional best-effort Internet delivery in order to meet customer expectations.[20] For example, consumers today expect voice over Internet protocol (VoIP) service to have the same quality as local exchange service provided over the public switched telephone network (PSTN), and for IPTV to have the same quality as cable television. To meet consumers' expectations for these types of services, rural broadband providers need to provide an enhanced quality of service on their networks, and it is only fair that they be permitted to charge a fee for the "better than best-effort" service that they are providing.

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quality when the service traverses only its network. When a service traverses additional networks, a service provider can still provide an enhanced quality of service, but cannot guarantee service quality because they have no control over the handling of traffic on other providers' networks.

[19] NPRM, 24 FCC Rcd 13112, ¶134.

[20] *Id*., 24 FCC Rcd 13116-13117, ¶150.

Most importantly, establishing a general and flexible definition of managed or specialized services will improve the ability and incentive of rural ILECs to invest in their broadband networks, to the benefit of all of their customers. Rural ILECs have limited customer bases for Internet access service that cannot be relied upon, by themselves, for recovering the considerable costs of deploying and operating a ubiquitous, high-speed broadband network. In addition, as the industry transitions to an all-broadband environment, it will be even more challenging for rural ILECs to earn revenues, as local exchange service and intercarrier compensation will diminish as a source of network cost recovery. Thus, rural broadband providers need new sources of revenue beyond Internet access service if they are to continue investing in their broadband networks, and managed or specialized services provide such an opportunity.

The more services that qualify as managed or specialized from which rural carriers are permitted to earn revenues, the greater their ability and incentive will be to invest in broadband service deployment and network upgrades. This includes deploying broadband to hard-to-reach, high-cost consumers as well as improving network bandwidth capacity, which will improve the speeds that all of their Internet access customers can receive. Furthermore, by enabling rural broadband providers to earn revenues from managed or specialized services, it improves their ability to keep rates for broadband Internet access affordable which, in turn, helps to drive adoption.

In short, the ability of rural ILECs to earn revenue from enhanced quality-of-service offerings will improve, not harm, the quality and value of the broadband Internet access service that their customers receive over shared networks used for managed or specialized services. Therefore, the Commission should establish a

general and flexible definition of managed or specialized services as it will help to advance the Commission's goals for making affordable, high-speed broadband Internet access service available throughout the nation.

V. THE COMMISSION SHOULD CONTINUE TO AFFORD RURAL ILEC BROADBAND PROVIDERS RETAIL PRICING FLEXIBILITY FOR THEIR BROADBAND INTERNET ACCESS SERVICES

The Commission should not constrain the manner in which rural ILEC broadband providers price their broadband Internet access services to end users. In particular, rural broadband providers should be able to charge subscribers based on their level of bandwidth usage.

Tiered pricing plans (*e.g.*, $29.99 per month for 10 mbps service; $14.99 per month for 5 mbps service) are already commonplace in the broadband Internet access services market. On the other hand, pricing based on bandwidth usage is still uncommon for broadband Internet access services. However, the effects of network congestion have led broadband Internet access providers of all sizes to consider some form of usage based pricing.

OPASTCO is encouraged that the NPRM recognizes that usage based pricing may be useful for managing network congestion.[21] This is because a relatively small number of heavy Internet users who utilize large amounts of bandwidth for extended periods of time (*e.g.*, gamers) can cause network congestion that diminishes the service quality experienced by the provider's other customers. Until such time as the bandwidth capacities of broadband networks far exceed the bandwidth requirements of the applications and services that ride over them, this will continue to be an issue. Certainly,

[21] *Id.*, 24 FCC Rcd 13113-13114, ¶137.

it will remain an issue in high-cost rural service areas for the foreseeable future where bandwidth capacity often lags behind what is available in urban areas.

Therefore, the Commission should continue to afford rural ILEC broadband providers wide latitude in their retail pricing, including the ability to price based on bandwidth usage. These usage based pricing arrangements could include, for example, metered prices (*i.e.*, per megabit charges) or a flat rate price for bandwidth usage up to a certain level with surcharges for usage that exceeds that level (similar to the popular "bucket of minutes" pricing model used for mobile phone service). These and other usage based pricing arrangements would enable rural broadband providers to more closely match their broadband Internet service packages to their customers' bandwidth needs and would serve as an additional network management tool to address congestion. Furthermore, charging heavy Internet users an amount that is more commensurate with the costs they impose on the network will help to keep rates for light and moderate users more affordable, which may spur additional broadband adoption and usage.

While there has been some criticism of usage based pricing arrangements, it is important to note that most OPASTCO members face competition from at least one non-satellite broadband provider, and a majority face competition from two. As a result, they have a strong incentive to devise pricing plans that are competitive and attractive to consumers and to fully disclose the terms and conditions of these plans. Thus, rural ILEC broadband providers should continue to have the flexibility to establish pricing models that best suit their customers' needs and that assist in mitigating the effects of network congestion. This includes pricing based on bandwidth usage.

VI. CONCLUSION

There are several actions that the Commission should take in this proceeding in order to promote broadband investment and adoption in rural service areas. To begin with, a nondiscrimination rule should be applied to all Internet-based content, application, and service providers that prohibits them from charging rural broadband providers for access to their offerings. Fee arrangements like the one established by ESPN, were they allowed to proliferate, would severely hinder rural ILECs' ability to improve the quality and reach of their broadband Internet access services. In addition, a nondiscrimination rule should also apply to providers of Internet backbone access and transports services that prohibits them from discriminating in their pricing to rural ILEC broadband providers. Reasonable and equitable access to these facilities and services is critical to rural ILECs' ability to offer affordable, high-speed broadband services throughout their service areas.

Second, the Commission should adopt a general and flexible definition of reasonable network management that allows rural ILEC broadband providers to prioritize the network traffic of certain types of applications and services in a competitively neutral manner. This would allow them to do their best to meet customers' service quality expectations for the various Internet-based applications and services that they utilize, which will promote customer retention and new adoption. In turn, this will drive further investment in rural broadband networks.

Third, the Commission should establish a general and flexible definition for managed or specialized services for which rural ILEC broadband providers may offer an enhanced quality of service for a fee. The more opportunities that rural ILECs have to

earn revenues from sources other than their limited customer bases for Internet access service, the greater their ability will be to improve the quality and value of the broadband Internet access service that their customers receive.

Finally, the Commission should continue to afford rural ILEC broadband providers flexibility in how they price their broadband Internet access services, including the ability to charge based on bandwidth usage. Usage based pricing arrangements would serve as an additional tool to address network congestion. Furthermore, it would help to keep rates for light and moderate bandwidth users more affordable, which would further the Commission's goals for maximizing broadband adoption and usage.

Respectfully submitted,

ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES

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CERTIFICATE OF SERVICE

I, Brian Ford, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was sent via electronic mail, on this, the 14th day of January 2010, to those listed on the attached sheet.

By: /s/ Brian Ford
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SERVICE LIST
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