OPASTCO

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March 23, 2010

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Room TW-A325
Washington, DC 20554

***Ex Parte* Notice**

Re: GN Docket Nos. 09-47, 09-51, 09-137
WC Docket Nos. 05-337, 06-122
CC Docket Nos. 96-45, 01-92, 04-36
MB Docket Nos. 07-269, 10-71

Dear Ms. Dortch,

On March 22, 2010, John Rose, Stuart Polikoff, and Steve Pastorkovich of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) met with Priya Aiyar, legal advisor to Chairman Genachowski. At the meeting we discussed the needs of rural, rate of return (RoR)-regulated incumbent local exchange carriers (ILECs) to continue expanding broadband availability, speeds, and adoption in their service territories and to provide advanced services that remain reasonably comparable to those offered in urban areas and at reasonably comparable rates.

Prior to the adoption of comprehensive USF and ICC reform, the Commission should quickly adopt rules to: (1) broaden the base of USF contributors to include, at a minimum, all broadband Internet access providers, (2) mitigate phantom traffic, and (3) clarify that VoIP providers are subject to ICC when their traffic terminates on the PSTN

At the meeting, OPASTCO began by recommending several actions the Commission should take as quickly as possible, and where there is already a more than sufficient record to act without additional notice and comment cycles. First, the Commission should reform the Universal Service Fund (USF) contribution methodology and, as part of that reform, broaden the base of contributors to include, at a minimum, all broadband Internet access providers over all platforms. The existing contribution methodology is in serious jeopardy of becoming unsustainable very soon. The National Broadband Plan (NBP) proposes that the FCC adopt

revised contribution methodology rules in the second stage of comprehensive USF reform beginning in 2012, but the Commission should not wait this long to act. Requiring equitable contributions from all broadband Internet access providers is necessary to sustain the USF for the long term and would permit prudent, necessary growth in the rural High Cost program, since both broadband Internet connections and broadband Internet access revenues are growing. Furthermore, requiring all broadband Internet access providers to contribute equitably to the USF is harmonious with a High Cost program that supports broadband directly, as these providers and their customers will all benefit from a robust, ubiquitous broadband network.

The second set of actions the Commission should take as soon as possible, and where there is already a sufficient record on which to act, concerns certain rules for intercarrier compensation (ICC). They are: (1) strengthening the call signaling rules to mitigate phantom traffic, and (2) confirming that traffic originated by voice over Internet protocol (VoIP) providers that terminates on the public switched telephone network (PSTN) is subject to the appropriate ICC. OPASTCO appreciates that the NBP recommends that the FCC address these issues but, unfortunately, it proposes that the Commission do so as part of comprehensive ICC reform. Rural RoR ILECs cannot afford to wait this long. The revenues that these carriers receive from ICC make up an essential component of their cost recovery and are critical to their ability to make broadband available throughout their service areas at affordable rates and at increasingly faster speeds. Therefore, the more revenues that rural ILECs lose to phantom traffic and VoIP providers' nonpayment of access prior to the implementation of ICC reform, the more difficult it will be for them to continue investing in their broadband networks for the benefit of the consumers in their service areas. Furthermore, a growing number of rural ILECs across the country have been forced into costly disputes with VoIP providers over their nonpayment of ICC before state commissions and the courts due to the vacuum in the FCC's rules. The Commission should therefore address these two issues without delay.

The USF should be permitted to grow so that consumers in rural RoR ILEC service areas can have access to "reasonably comparable" broadband services and rates

After discussing actions the Commission should address in the near term, OPASTCO then raised other longer-term concerns with the NBP's comprehensive USF and ICC reform proposal. First, the NBP recommends that the FCC aim to keep the overall size of the USF close to its current size. However, once the USF contribution base is broadened to include, at a minimum, all broadband Internet access providers, it will be feasible to allow for prudent, necessary growth in the size of the Fund so that broadband in rural RoR ILEC service areas can continue to be sufficiently supported.

It is clear from the NBP's recommendations that maintaining the USF at its present size will not enable consumers in rural ILEC service areas to have access to broadband services and rates that remain reasonably comparable to those offered in urban areas of the country. To begin with, maintaining the size of the Fund at its current level will only enable the FCC to focus funding from the Connect America Fund (CAF) on those areas without access to broadband at the target speeds established by the NBP, at least until the ten-year transition is complete. In fact, the plan does not even attempt to estimate the amount of support that may be necessary to sustain broadband in areas where it is already available. Even more concerning is that the NBP

proposes that up to $1.8 billion of the funding for the CAF over the next decade come from RoR ILECs' existing support, which has been essential to the success that many have had thus far in deploying broadband, at today's speeds, in their service areas. Therefore, if the Fund is not permitted to grow beyond its current size, it will be near impossible for rural RoR ILECs to continue investing in their networks and provide affordable access to the growing array of bandwidth-intensive applications and services that are available in other areas of the country and that are critical to driving adoption.

The Commission should maintain RoR regulation; requiring RoR ILECs to convert to price cap regulation by freezing their per-line ICLS would seriously impede the maintenance and expansion of affordable broadband services to rural consumers

Directly related to the concern of maintaining the USF at its present size is the NBP's recommendation to require RoR ILECs to convert to price cap regulation. This would be accomplished by freezing RoR carriers' per-line interstate common line support (ICLS), which is how the plan intends to derive the $1.8 billion from these carriers' legacy support to transfer to the CAF. Requiring RoR carriers to convert to price cap regulation and freezing their per-line ICLS would have a devastating effect on broadband investment in these service areas. ICLS supports broadband-capable loop distribution plant, which is a fixed cost and which makes up a significant part of the costs in the provision of broadband. Moreover, ICLS provides RoR carriers with the opportunity to earn a reasonable return on the interstate-allocated portion of these common line investments while, at the same time, allowing interstate subscriber line charges (SLCs) to remain at an affordable level. Thus, freezing ICLS on a per-line basis would make it very difficult for RoR ILECs to obtain the necessary capital for further investment in broadband facilities, including the ability to gain access to debt financing. Lenders will be reluctant to finance a small carrier when it is unclear whether it can earn a return on its investment and whether it will have sufficient revenues to repay its loan. It should also be considered that a primary reason for the loss of lines that some RoR ILECs are experiencing is precisely because of the broadband that they have made available to their customers and the various service options it affords them. Thus, imposing a per-line freeze on ICLS would penalize RoR carriers for their success in deploying broadband and disincent further investment. Surely, if ICLS were to be frozen on a per-line basis all the way through the end of the proposed transition in 2020, it is doubtful that many consumers in RoR ILEC service areas will have access to broadband speeds and end-user rates that are comparable to metropolitan areas of the country.

Rural ILEC video providers need nondiscriminatory access to video content in order to help drive broadband adoption in their service areas

The FCC has correctly recognized that there is an intrinsic link between a provider's ability to offer video service and to deploy broadband networks. Rural ILECs that have been able to bundle video with broadband services have experienced broadband adoption rates that are nearly 24 percent higher than those carriers that offer broadband alone. Since nondiscriminatory access to video content is a vital component of broadband adoption, it is imperative for the Commission to reform the retransmission consent and program access regimes to release the "take it or leave it" stranglehold that programmers have over content availability and pricing.

The Commission should prohibit the mandatory tying of unwanted programming with "must-have" content, and ban mandatory nondisclosure provisions that obscure the market value of content. Furthermore, rules should prohibit programmers from charging mandatory per-subscriber fees for broadband customers, regardless of whether the subscriber views the content or not. This move towards imposing the cable pricing model on the Internet poses a substantial threat to further broadband adoption. Rules should also prohibit programmers from blocking, or imposing unreasonable prices or restrictions on, consumers' access to "over-the-top" broadband video content.

In accordance with FCC rules, this letter is being filed electronically in the above-captioned dockets.

Sincerely,

Stuart Polikoff
Vice President – Regulatory Policy and Business Development
OPASTCO

cc: Priya Aiyar