OPASTCO

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May 12, 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

Dear Ms. Dortch,

On May 11, 2010, John Rose, Stuart Polikoff, Brian Ford, and Randy Tyree of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) met with Sharon Gillett, Carol Mattey, Don Stockdale, John Hunter, Al Lewis, Marcus Maher, Amy Bender, Rebekah Goodheart, Pam Arluk, Alex Minard, and Jenny Prime of the Wireline Competition Bureau. The purpose of the meeting was to discuss the universal service section of the National Broadband Plan (NBP). OPASTCO 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.

OPASTCO recommended several actions that 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. The existing contribution methodology is in serious jeopardy of becoming unsustainable very soon, and thus reform cannot wait. Requiring equitable contributions from all broadband Internet access providers is necessary to sustain the USF for the long term. It would also permit prudent, necessary growth in the rural High Cost program, since both broadband Internet connections and broadband Internet access revenues are growing. Therefore, contributions would be spread more equitably over consumers nationwide and would not place an unreasonable burden on end-user bills.

Second, the Commission should quickly make modifications to certain intercarrier compensation (ICC) rules prior to more comprehensive reform. 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. The revenues that rural RoR 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 rural consumers in their service areas.

After discussing the issues outlined above, OPASTCO raised other concerns with the NBP. First, OPASTCO stated that maintaining the USF at its present size will not enable consumers in rural ILEC service areas to have access to broadband services that are reasonably comparable to those offered in urban areas of the country. This is demonstrated by the fact that the plan sets a low initial broadband availability target of 4 mbps download speed to guide public funding. At the same time, the plan aspires to make 100 mbps download speed available to 100 million homes. Clearly, 4 mbps and 100 mbps are not reasonably comparable.

Another consequence of maintaining the USF at its current size is the NBP's recommendation to require RoR ILECs to convert to incentive regulation by freezing their interstate common line support (ICLS) on a per-line basis in order to help fund the Connect America Fund (CAF). This proposal would have a devastating effect on broadband investment in rural ILEC service areas and place upward pressure on broadband rates for end users. 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 their 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. It should also be considered that a primary reason for the decline in subscriptions to local exchange service 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. Therefore, maintaining interstate RoR regulation as an option for rural ILECs is critical to the ongoing provision of affordable, high-quality broadband in rural service territories.

Finally, OPASTCO noted that rural ILECs are heavily dependent upon access to debt financing in order to deploy and upgrade their broadband networks. OPASTCO has heard from some lenders that the NBP's universal service proposals are making them reluctant to extend new loans to rural ILECs because it is unclear whether these carriers will have sufficient future cash flows to service the debt. In addition, a number of OPASTCO members have expressed their concern that the lack of revenue stability created by the NBP's recommendations may force them to put a halt to further network upgrades. Thus, in order for consumers in rural ILEC service areas to gain access to broadband services that are comparable to those offered in other areas of the nation, the Commission should ensure that its reform of the rural High Cost program encourages, rather than harms, ongoing network investment.

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: Sharon Gillett
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