

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

In the Matter of)
)
Development of Nationwide Broadband Data) WC Docket No. 07-38
to Evaluate Reasonable and Timely)
Deployment of Advanced Services to All)
Americans, Improvement of Wireless)
Broadband Subscribership Data, and)
Development of Data on Interconnected Voice)
over Internet Protocol (VoIP) Subscribership)

**COMMENTS
OF THE
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES
AND THE
WESTERN TELECOMMUNICATIONS ALLIANCE**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)¹ and the Western Telecommunications Alliance (WTA)² hereby submit these comments in the above-captioned proceeding.³ In addition to serving as ILECs, OPASTCO and WTA members are among the industry leaders in bringing advanced services to consumers in high-cost rural areas, either

¹ OPASTCO is a national trade association representing over 600 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 5.5 million customers. Almost all of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37).

² WTA is a trade association that represents approximately 250 rural telecommunications carriers operating in the 24 states west of the Mississippi River. Most members serve fewer than 3,000 access lines overall, and fewer than 500 access lines per exchange.

³*Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC 07-38, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-89 (rel. June 12, 2008) (Report and Order, Further Notice).

through their ILEC operations, competitive local exchange carrier (CLEC) subsidiaries, and/or through Multichannel Video Programming Distributor (MVPD) operations that often offer triple play packages that bundle voice, video and broadband data services. Virtually all OPASTCO and WTA members offer broadband Internet access using a variety of delivery mediums and, on average, are able to reach 88 percent of the consumers in their service areas. Over 40 percent offer broadband to all of the consumers in their service areas. Almost 90 percent are able to deliver data speeds of at least one megabit per second (Mbps) in one direction.⁴

OPASTCO and WTA agree that the Commission needs accurate data regarding the availability and penetration of broadband services in order to make informed decisions. However, the Commission should carefully consider how the costs of imposing additional reporting requirements on small LECs impacts their efforts to make additional broadband investments in high cost areas. Any new reporting requirements should not require rural LECs to significantly alter their normal business practices or incur substantial costs. These costs would undermine rural LECs' efforts to make additional investments in broadband infrastructure.

The data that rural LECs presently provide regarding their voice telephone connections is sufficient. Should the Commission alter these requirements, Voice over Internet Protocol (VoIP) providers should be required to supply comparable information. In addition, it is not feasible to collect reliable broadband connection speed data at the end user level, or to collect consistent broadband price information. Finally, the

⁴ OPASTCO comments, GN Docket No. 07-45 (fil. May 16, 2007), pp. 3-5.

Commission must preserve the confidentiality of sensitive data in order to maintain rural LECs' ability and incentive to invest in broadband infrastructure.

II. NEW DATA COLLECTIONS SHOULD NOT REQUIRE RURAL LECs TO SIGNIFICANTLY ALTER THEIR NORMAL BUSINESS PRACTICES, AS THE COSTS INVOLVED WILL IMPEDE FURTHER BROADBAND INVESTMENT

As the Commission has recognized earlier in this proceeding, the Government Accountability Office (GAO) has suggested that the Commission should “develop information regarding the degree of cost and burden that would be associated with various options for improving the information about broadband deployment.”⁵ The Commission has yet to provide cost or burden estimates outlining what the impacts on rural LECs would be if they were required to revamp their billing, record keeping, customer service training and other business practices in order to comply with any of the requirements contemplated in the Further Notice. In the event that the Commission adopts any new rules, it should clearly demonstrate how the costs of complying with new rules, which are typically disproportionately higher for rural LECs, are justified in light of rural LECs' continual efforts to improve the reach and quality of their broadband service offerings.⁶

The Further Notice indicates that facts regarding the potential costs and burdens that additional reporting requirements would impose upon service providers will be

⁵ WC Docket No. 07-38, Notice of Proposed Rulemaking, 22 FCC Rcd 7760, 7784, ¶6 (2007) (citations omitted).

⁶ Specific attention should be paid to the burdens on companies with fewer than 25 employees, per the Paperwork Reduction Act (*see* Further Notice, ¶50). It should be noted that rural LECs have an average of 22 employees (*see*, Telergee Alliance, 2007 Telergee Benchmarking Study, p. 53 (2007)).

gleaned from the record in this proceeding.⁷ However, rules should only be adopted after these key facts have been collected and all stakeholders have had an opportunity to analyze them. The Commission could accomplish this through a Notice of Inquiry or a more specific supplemental Further Notice of Proposed Rulemaking.

III. THE DATA REGARDING VOICE CONNECTIONS THAT RURAL LECs PRESENTLY PROVIDE IS SUFFICIENT, BUT ANY CHANGES TO THESE REQUIREMENTS SHOULD ALSO APPLY TO VOIP PROVIDERS

The Further Notice seeks comment on whether LECs and VoIP service providers should be required to report the number of voice telephone service connections, and the percentage of these that are residential, at the 5-digit ZIP Code or Census Tract level.⁸ Rural LECs currently provide copious amounts of data to the Commission, as well as to state commissions, regarding their voice services. They do not maintain voice service records at the Census Tract level in the course of their normal business practices. If the Commission were to require such a change, it should demonstrate how the benefits would outweigh the costs.

In the Report and Order, the Commission required VoIP providers to report information that is comparable to what LECs are required to report for their voice service connections. The Commission correctly recognize that interconnected VoIP services are becoming increasingly competitive with local telephone service and that it is appropriate to collect information on subscriptions in order to determine the extent of competition

⁷ Further Notice, Initial Regulatory Flexibility Analysis, ¶55. As the regulating entity that is contemplating more burdensome reporting requirements, it is the Commission's responsibility to provide cost and burden estimates, and it cannot shift this duty to the public. See Reply Comments of the U.S. Small Business Administration Office of Advocacy, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 (fil. Jul. 22, 1999), pp. 7-8.

⁸ Further Notice, ¶33.

posed by these services.⁹ Therefore, in the event the Commission decides to alter voice service reporting requirements for LECs, VoIP providers should continue to be required to supply comparable data. This would ensure that the Commission has complete and comparable data for all of the competing voice services available to consumers.¹⁰

IV. THE COLLECTION OF RELIABLE BROADBAND CONNECTION SPEED DATA AT THE END USER LEVEL IS NOT FEASIBLE

The Further Notice seeks comment on how the Commission might require service providers to report the actual broadband connection speeds experienced by customers.¹¹ However, as the Further Notice correctly acknowledges, factors beyond the control of service providers may compromise their ability to report this data.¹² As OPASTCO noted earlier in this proceeding, rural LECs do not have the capacity to measure the actual broadband connection speeds experienced at the consumer's location.¹³ End users' data speeds are influenced by many factors, such as network configuration, topography, network usage at a given moment, backbone choke points, and other considerations over which rural LECs have minimal, if any, control. The only way for rural LECs to know what specific speeds end users actually experience is to run tests at customers' premises. Even then, the results will vary at different times based on usage factors elsewhere in the network that may be impossible to quantify. The costs of acquiring this highly variable and unreliable information would be great, and certainly far greater than the value it

⁹ Report and Order, ¶¶25-31.

¹⁰ *Ibid.*, ¶30.

¹¹ Further Notice, ¶36.

¹² *Id.*

¹³ OPASTCO comments, WC Docket No. 07-38, (fil. June 15, 2007), pp. 7-8.

would provide the Commission. Therefore, it remains unadvisable to require rural LECs to report the actual speeds experienced by customers.

V. THE COLLECTION OF CONSISTENT BROADBAND PRICE INFORMATION IS NOT FEASIBLE

The Further Notice seeks to supplement the record on broadband price information.¹⁴ Yet, as the Further Notice correctly acknowledges, price information is complex due to promotions, bundling discounts, contract terms, multi-part tariffs, and other factors.¹⁵ Furthermore, price fluctuations can be frequent and have the potential to render data gathering meaningless or even misleading.¹⁶ Nonetheless, the Further Notice considers requiring providers to report pricing information in a variety of ways, including the lowest and highest rate in a state or Census Tract, least expensive bundled or standalone service, price per bit, average revenue per user, etc.¹⁷

The Further Notice is considering requiring providers to report data that rural LECs do not maintain in their normal course of business (such as broadband prices by Census Tract, price per bit, etc.). Requiring rural LECs to alter their business practices in order to report this data would be costly and burdensome. Because pricing data would be meaningless or misleading, it would be particularly inefficient for the Commission to force rural LECs and their customers to bear the costs of collecting and reporting this information.

¹⁴ Further Notice, ¶38.

¹⁵ *Id.*, ¶37.

¹⁶ *Id.*

¹⁷ *Id.*, ¶38.

VI. THE COMMISSION MUST PRESERVE THE CONFIDENTIALITY OF DATA IN ORDER TO MAINTAIN RURAL LECS' ABILITY AND INCENTIVE TO INVEST IN BROADBAND INFRASTRUCTURE

The Further Notice recognizes concerns regarding the confidentiality of collected data.¹⁸ Based upon the experiences of their members, OPASTCO and WTA share this concern and urge the Commission to ensure that any data collected remains confidential. This is important in order to preserve the ability and incentive of rural LECs to continue investing in broadband infrastructure.

Rural LECs, especially those offering voice, video and data services in competition with large national providers, have found predatory pricing to be an all too common occurrence.¹⁹ Predatory pricing drives service providers out of the marketplace, reduces customer choice, and has a chilling effect on network investment. If competitively sensitive data is available to large providers, rural LECs will be further dissuaded from making new investments in broadband infrastructure.

VII. CONCLUSION

OPASTCO agrees that the Commission needs accurate information in order to make informed decisions. At the same time, the Commission must carefully consider how the costs and burdens of altering reporting rules will impact rural LECs' ability to deploy broadband. The Commission should provide cost and burden estimates for the public to comment on prior to adopting any new reporting requirements.

The Commission's existing data reporting requirements for telephone connections are sufficient for rural LECs. However, in the event the Commission decides to alter

¹⁸ *Id.*, ¶39.

¹⁹ OPASTCO reply comments, MB Docket No. 06-189 (fil. Dec. 29, 2006), pp. 13-14; OPASTCO reply comments, MB Docket No. 05-255 (fil. Oct. 11, 2005), p. 6.

these requirements, VoIP providers should be required to provide comparable data. It is not feasible to collect reliable broadband connection speed data at the end user level, or to collect consistent broadband price information. Finally, the Commission must preserve the confidentiality of sensitive data in order to maintain rural LECs' ability and incentive to invest in broadband infrastructure.

Respectfully submitted,

**ORGANIZATION FOR THE PROMOTION
AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES**

By: /s/ Stuart Polikoff
Stuart Polikoff
Director of Government Relations

By: /s/ Stephen Pastorkovich
Stephen Pastorkovich
Business Development Director/
Senior Policy Analyst

21 Dupont Circle, NW
Suite 700
Washington, DC 20036

(202) 659-5990

**THE WESTERN
TELECOMMUNICATIONS ALLIANCE**

By: /s/ Derrick Owens
Derrick Owens
Director of Government Affairs

317 Massachusetts Ave., NE
Suite 300C
Washington, DC 20002

(202) 548-0202

August 1, 2008

CERTIFICATE OF SERVICE

I, Stephen Pastorkovich, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies and the Western Telecommunications Alliance was sent by first class United States mail, postage prepaid, or via electronic mail, on this, the 1st day of August 2008, to those listed on the attached sheet.

By: /s/ Stephen Pastorkovich
Stephen Pastorkovich

SERVICE LIST
WC Docket No. 07-38

Cheryl Johns
Assistant Chief Counsel for
Telecommunications
Office of Advocacy
U.S. Small Business Administration
Cheryl.Johns@sba.gov

Eric Malinen
Senior Legal Advisor
Office of Communications Business
Opportunities
Federal Communications Commission
eric.malinen@fcc.gov

Kristy L. LaLonde, OMB Desk Officer
Kristy_L._LaLonde@omb.eop.gov

Judith B. Herman
Federal Communications Commission
Judith-B.Herman@fcc.gov

Best Copy and Printing, Inc.
fcc@bcpiweb.com