OPASTCO

WESTERN TELECOMMUNICATIONS ALLIANCE

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October 14, 2008

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

***Ex Parte* Notice**

Re: Developing a Unified Intercarrier Compensation Regime
CC Docket No. 01-92

High-Cost Universal Service Support
WC Docket No. 05-337

Federal-State Joint Board on Universal Service
CC Docket No. 96-45

Dear Ms. Dortch,

On October 14, 2008, Mark Gailey of Totah Communications, Inc., Robert DeBroux of TDS Telecom, John Rose and Stuart Polikoff of the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and Derrick Owens of the Western Telecommunications Alliance (WTA) met with Scott Deutchman, Competition and Universal Service Legal Advisor to Commissioner Copps. The purpose of the meeting was to discuss OPASTCO and WTA's recently filed compromise intercarrier compensation reform plan.

The attached document was handed out at the meeting and details what we discussed. In accordance with FCC rules, this letter and the attached document are being filed electronically in the above-captioned dockets.

Sincerely,

Stuart Polikoff
Director of Government Relations
OPASTCO

Attachment

October 10, 2008

FILED VIA ECFS
Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; High-Cost Universal Service Support, WC Docket No. 05-337; and Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO)[1] and the Western Telecommunications Alliance (WTA)[2] jointly proffer the attached intercarrier compensation reform proposal regarding rural rate-of-return (RoR) incumbent local exchange carriers (ILECs) as a reasonable compromise between maintenance of the status quo and various pending proposals that would effectively eliminate the critical access revenue stream relied upon by rural ILECs and their customers. This compromise proposal is intended to be consistent with the pending Missoula Plan and with recent access reform proposals advanced by other parties.

OPASTCO and WTA intend this proposal to be forward looking in that it recognizes the impacts of the evolving next generation network and seeks to ensure that the ongoing development of rural broadband-capable facilities and services is not impeded by the growing uncertainty and instability of the existing intercarrier compensation regime. If rural ILECs are to remain able to obtain the loans and other funding needed to continue to upgrade their networks to bring evolving broadband speeds and services to their customers, the arbitrage, evasion and avoidance encouraged by the existing intercarrier compensation "system" must be replaced by sufficient, predictable revenue flows that ensure reasonably comparable networks, services and rates for rural residents. In addition, the growing uncertainty surrounding the current intercarrier

[1] OPASTCO is a national trade association representing over 600 small ILECs serving rural areas of the United States. Its members include both commercial companies and cooperatives, and serve more than 5.5 million rural customers.
[2] WTA is a trade association that represents approximately 250 rural ILECs that serve rural areas and customers in the 24 states west of the Mississippi River.

compensation and universal service regimes must be dealt with through definitive regulatory actions.

Although many industry participants agree that intercarrier compensation is in serious need of reform, there are sharp divisions regarding the nature of the specific reforms that are needed. OPASTCO and WTA believe that one of the keys to reducing these differences is to recognize that rural RoR ILECs are not only very different from larger carriers, but also greatly differ from each other. Their plan therefore provides options for the levels at which carriers unify their access charges.

The key provisions of the OPASTCO-WTA Plan are:

- All rural RoR ILECs will unify their interstate and intrastate access rates for end-office switching and transport for originating and terminating traffic by reducing their intrastate rates to existing interstate levels over a three-year transition period, and will have the option of setting even lower unified end-office switching rates during this period. This rate unification will take place unless a state commission takes the active step of "opting out" of the plan. This state "opt-out" provision eliminates the need and legal complications for the FCC to preempt state authority over intrastate access rates.

- At the end of Year 3, each rural RoR ILEC must select one of the following two options:
    - OPTION 1: originating and terminating access rates for end-office switching remain at the unified interstate level; or
    - OPTION 2: over the next two years, originating and terminating access rates for end-office switching are further reduced to a unified rate below the existing interstate rates.

- A Restructure Mechanism (RM) constitutes an essential element of the Plan, and is required to provide the critical revenue stability and cost recovery needed to maintain service quality, to encourage and enable investment in broadband and other network upgrades as end-office switching rates are unified and reduced, and to preclude the need for substantial and unaffordable increases in end-user rates to offset access revenue reductions.

- An end-user rate benchmark mechanism, and an associated maximum subscriber line charge (SLC) increase, are included in the Plan for the purposes of recovering a reasonable and affordable portion of the reduced access revenues from end users, of keeping the RM at a sustainable size, and of creating a reasonable degree of equity in the rates charged in different states.

- A "rural transport rule" is included that reasonably limits the financial obligation of rural RoR ILECs for the transport of non-access traffic beyond their meet points with non-rural carriers and that eliminates the potential for excessive transport costs that would significantly increase rural end-user rates.

- Call signaling, call record and other intercarrier compensation requirements are needed to ensure that all service providers whose traffic is terminated on ILEC networks (including wireless carriers and voice over Internet protocol (VoIP) providers) pay for their use of such networks. These provisions will reduce substantially or eliminate the problem of "phantom" or other unbillable traffic that has forced rural ILECs to subsidize the operations of non-paying service providers and has placed honest service providers at a competitive disadvantage.

- The Plan envisions that the National Exchange Carrier Association (NECA) pools will work in conjunction with the RM, and continue to assist the approximately 1,100 rural ILECs in recovering their network costs and maintaining revenue certainty while keeping nationwide rural access rates at the lowest practicable levels.

- The Plan uncaps or re-bases the High-Cost Loop Support (HCLS) universal service mechanism in order to encourage and enable upgrades of the rural loop facilities necessary to provide rural consumers with reasonably comparable access to advanced services.

- The Plan provides for initiation of a Commission proceeding in Year 2 to evaluate how the plan is working and to permit early modifications and adjustments.

OPASTCO and WTA look forward to discussing these proposals with Commission personnel and interested parties.

Respectfully submitted,

Organization for the Promotion and Advancement of Small Telecommunications Companies

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

Western Telecommunications Alliance

By: /s/ Gerard J. Duffy
Gerard J. Duffy
Regulatory Counsel

cc: Chairman Kevin J. Martin
Commissioner Jonathan S. Adelstein
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Deborah Taylor Tate
Daniel Gonzalez
Amy Bender
Scott Bergmann
Scott M. Deutchman
Nicholas G. Alexander
Greg Orlando

Dana R. Shaffer
Julie Veach
Kirk Burgee
Donald Stockdale
Marcus Maher
Jeremy Marcus
Randy Clarke
Alexander Minard
Albert Lewis
Deena Shetler
Lenworth Smith
Pamela Arluk
Jennifer McKee
Thomas Buckley
Cheryl Callahan
Gina Spade

Compromise Intercarrier Compensation Reform Plan
submitted by
The Organization for the Promotion and Advancement of Small Telecommunications Companies
and
The Western Telecommunications Alliance

CC Docket No. 01-92
WC Docket No. 05-337
CC Docket No. 96-45

Rural rate of return (RoR)-regulated incumbent local exchange carriers (ILECs) rely heavily on interstate and intrastate access revenues: (a) to operate and maintain their existing carrier of last resort networks; (b) to upgrade their networks to make available basic and advanced services to all customers; and (c) to obtain and repay construction loans necessary to run and improve their networks. These existing access revenues, along with universal service funding, support the construction, operation and maintenance of high-cost, rural networks and the provision of quality services to rural consumers at just, reasonable and affordable rates comparable to those in urban areas.

During recent years, these critical access revenues have become increasingly unstable and uncertain due to the variety of arbitrage, evasion and avoidance tactics resulting from increasing dissonance among existing intercarrier compensation rules and changing economic and technological conditions. This lack of stability and certainty in the availability of originating and terminating access revenues is beginning to significantly impair the ability of rural RoR ILECs to continue investing in and deploying high-quality networks capable of providing advanced services.

The following intercarrier compensation reform plan for the rural RoR ILEC sector: (a) is offered as a reasonable compromise with respect to other plans recently filed at the FCC; (b) is designed to fit within the framework offered by other parties; (c) provides alternatives for rural RoR ILECs based on their individual situations; (d) reforms both originating and terminating access; and (e) establishes a reasonable and stable Restructure Mechanism (RM) and end-user rate benchmark.

I. Commission Action with State Choice to Opt Out. The following intercarrier compensation rate unification plan: (a) retains the existing access and reciprocal compensation regimes; (b) would be enacted by the FCC; and (c) would apply to rural RoR ILECs unless a state commission opts out of the unification.

A. Intercarrier Rate Changes.

1. Intrastate originating and terminating access rates and structure are transitioned to interstate originating and terminating access rates and structure over a three-year period. Alternatively, a rural RoR ILEC may elect initially to unify its originating and terminating access rates for end-office switching at a level below its existing interstate rates. In either case, funding from a RM is provided, beginning in Year 1, and calculated each year as a residual, equal to the difference between the rural RoR ILEC's switched access revenue requirement and its revenue from intercarrier charges (net of intercarrier compensation payments to other carriers), maximum incremental subscriber line charge (SLC) revenue permitted by Section I.B. below, and local switching support (LSS). The rural RoR ILEC's switched access revenue requirement is the sum of its interstate switched access revenue requirement, calculated each year at the FCC's prescribed rate of return of 11.25 percent, its base period (Year 1) intrastate switched access revenue, and base period reciprocal compensation revenue net of reciprocal compensation expenses.

2. At the end of Year 3, a rural RoR ILEC must select one of the following two options:
   - OPTION 1: Originating and terminating access rates for end-office switching remain at the unified interstate level.
   - OPTION 2: Beginning in Year 4, transition over a two-year period originating and terminating access rates for end-office switching to a unified level below the existing interstate rates.

3. Under both options, funding from a RM is provided and calculated each year as stated in Section I.A.1. above. Intercarrier compensation reform cannot proceed and customers in rural RoR ILEC areas would be significantly harmed, unless a sufficient RM (i.e., one that recognizes the recovery of revenue shortfalls that a rural RoR ILEC incurs as a result of intercarrier compensation reform) is established by the FCC. The RM retains the revenues that are required for the maintenance of the existing network and deployment of advanced networks in rural RoR high-cost operating areas. Moreover, the RM is an important first step in creating a transition to the next generation broadband network. It recognizes the flat-rate nature of broadband service and provides for a common sharing of high costs among all parties that benefit from a ubiquitous network. In addition, the revenue pools administered by the National Exchange Carrier Association (NECA) have been critical to the rural RoR ILEC industry in their ability to recover the costs of their networks. This plan envisions that those pools will continue to support the industry with the complement of the RM in creating and maintaining revenue stability. The FCC is encouraged to work with NECA to assure a smooth implementation of intercarrier compensation reform for the more than 1,100 RoR ILECs that participate in its pools.

4. Under both options, intrastate transport rates would be transitioned over a three-year period to mirror interstate transport rates and structure. The revenue shortfall from this change would also be recovered from the RM.

5. Both options also include an end-user rate benchmark mechanism that will limit the size of the RM. (See Section I.B., below.) Shifting recovery of some of the revenues that were previously recovered in access rates to end-user customers, based on a benchmark rate, brings equity to consumers in other areas of the country. However, such a benchmark cannot be so high as to put rural RoR ILECs at a competitive disadvantage nor to violate the requirements of the 1996 Act that rates be just, reasonable and affordable and comparable to rates charged in urban areas.

6. Separate access and reciprocal compensation regimes would be maintained and traffic would be identified as to the appropriate compensation regime based on the "numbers rule" delineated in the Missoula Plan. The terminating unified access rate proposed herein would be a fixed default rate level for all terminating traffic. Voluntary negotiations may revise the rate to a different level, but if there is no negotiated agreement as to a rate level, the default terminating rate would apply. In cases where an existing interconnection agreement for the exchange of local terminating traffic under section 251(b)(5) of the 1996 Act is in place:
   - If the rate in the interconnection agreement is higher than the rural RoR ILEC access rate, the interconnection rate will be reduced to the rural ILEC access rate as proposed herein.
   - When the interconnection agreement expires, the carriers will charge the lower of the expired interconnection rate or the access rate under this plan.

B. <u>End-User Rate Benchmark.</u>

1. If a rural RoR ILEC's local end-user rate, plus interstate and intrastate SLC, plus intrastate universal service fund (USF) contribution per line, plus mandatory extended area service (EAS) charge per line is less than a nationwide end-user rate benchmark cap of $25, the ILEC would increase its interstate SLC up to a maximum of $2.25 or until the $25 benchmark is reached (i.e., the maximum SLC increase is $2.25 even if the ILEC is still below the $25 benchmark). The increase may also be imputed by the ILEC.

II. <u>Commission Action.</u> The Commission would enact the following:

A. <u>Restructure Mechanism.</u>

1. A RM to recover the remainder of the originating and terminating revenue shortfall, not recovered by the end-user rate changes, as constrained by Section I.B.1. above, and the changes in transport rates as described in Section I.A.4. above.

B. Cap on Interstate Access Rates.

1. During the first three years of the transition, interstate originating and terminating rates will be capped and the shortfall, if any, from the interstate revenues generated from the capped interstate originating and terminating access rates and the interstate originating and terminating access revenue requirement will be recovered from either the LSS or interstate common line support (ICLS) universal service mechanisms.
2. Beginning at Year 4, the originating and terminating rate for those rural RoR ILECs that choose Option 1 will be capped and the shortfall, if any, from the revenues generated from the capped originating and terminating rate and the originating and terminating access revenue requirement will be recovered from either the LSS or ICLS universal service mechanisms.

C. Rural Transport Rule.

1. For non-access traffic, rural RoR ILECs would not be responsible for paying for or provisioning any transport to or from their meet point except when that connection is directly to another rural RoR ILEC. Specifically, a rural RoR ILEC will be responsible for the transport to deliver its non-access traffic to a non-rural terminating carrier's point of presence (POP) when that POP is located within the rural RoR ILEC's service area. If the non-rural terminating carrier locates its POP outside the rural RoR ILEC's service area, the rural RoR ILEC's transport obligation stops at its meet point and the non-rural terminating carrier is responsible for the remaining transport to its POP.

High-Cost Loop Support (HCLS).

1. Uncap or at least re-base the HCLS universal service mechanism. If the re-basing option is chosen, Part 36.604 of the Commission's rules should be modified as follows:

> "The Rural Growth Factor (RGF) is equal to ~~the sum of~~ the annual percentage change in the United States Department of Commerce's Gross Domestic Product--Chained Price Index (GDP-CPI) ~~plus the percentage change in the total number of rural incumbent local exchange carrier working loops during the calendar year preceding the July 31st filing submitted pursuant to Sec. 36.611. The percentage change in total rural incumbent local exchange carrier working loops shall be based upon the difference between the total number of rural incumbent local exchange carrier working loops on December 31 of the calendar year preceding the July 31st filing and the total number of rural incumbent local exchange carrier working loops on December 31 of the second calendar year preceding that filing, both determined by the company's submissions pursuant to Sec. 36.611. Loops acquired by rural incumbent local exchange carriers shall not be included in the RGF calculation~~.

III. <u>FCC Proceeding.</u> In Year 2, the FCC would open a proceeding to:

- Review the transition to unified originating and terminating access rates as described above, and determine if further action is required.
- Evaluate if further revisions to the end-user rate benchmark are necessary.
- Evaluate if the intercarrier compensation regime should move from a per-minute recovery method to a port and link recovery method.
- Review the RM and evaluate if it should change to a broadband funding mechanism.
- Begin investigations on regulatory reforms necessary for the transition from the existing public switched network environment to the next generation advanced services broadband environment.