

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

In the Matter of )  
 )  
Service Quality, Customer Satisfaction, ) WC Docket No. 08-190  
Infrastructure and Operating Data Gathering )

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

**I. INTRODUCTION & SUMMARY**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and the Western Telecommunications Alliance (WTA) hereby submit these comments in the above-captioned proceeding.<sup>1</sup> 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). Virtually all members of OPASTCO offer broadband data services to rural subscribers using a variety of technologies and delivery mediums. WTA represents more than 250 small communications companies across the 24 states west of the Mississippi River. WTA's members serve some of the most remote, rural and

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<sup>1</sup>*Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*, WC Docket No. 08-190, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 (2008) (Opinion and Order, NPRM).

hard-to-serve communities in the country and are the provider of last resort to these communities. Practically all WTA member companies provide high-quality voice, broadband, and video services in high-cost areas. Most members serve fewer than 3,000 access lines overall, with fewer than 500 access lines per exchange.

OPASTCO and WTA oppose the imposition of new reporting requirements on rural LEC broadband providers, as there is no established need for them. The imposition of new requirements on rural LECs would impede the efforts of these carriers to continue deploying and upgrading broadband services in the high-cost areas they serve. In the event the Commission decides to impose additional reporting requirements, any data collected should remain confidential. In addition, the NPRM fails to comport with the Regulatory Flexibility Act, and additional requirements cannot be justified under the Paperwork Reduction Act.

## **II. RURAL LECS SHOULD NOT BE BURDENED WITH NEW ARMIS REPORTING REQUIREMENTS FOR THEIR BROADBAND SERVICES, AS THE COMMISSION HAS FAILED TO ESTABLISH A NEED TO COLLECT THIS DATA**

The NPRM tentatively concludes that information currently presented to the Commission by price cap LECs through various Automated Reporting Management Information System (ARMIS) Reports should also be supplied by other providers of broadband services. Specifically, the NPRM tentatively concludes that all broadband providers should be required to file ARMIS Reports 43-07 (regarding infrastructure), 43-08 (regarding outside plant, switching plant, and telephone call statistics),<sup>2</sup> 43-05 (regarding service quality), and 43-06 (regarding customer satisfaction).<sup>3</sup>

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<sup>2</sup> *Id.*, 23 FCC Rcd 13664-13665, ¶ 34.

<sup>3</sup> *Id.*, 23 FCC Rcd 13665, ¶ 35.

However, the need to collect this new data from rural LEC broadband providers has not been established. The Opinion and Order itself illustrates this shortcoming as it notes, without elaboration, that regulators “might” find the data useful.<sup>4</sup> The NPRM repeats this tepid statement, saying that the data “might” be useful,<sup>5</sup> again without explanation or discussion. The NPRM’s assertions are entirely unsupported and provide no indication of how the data might be of use to the Commission. Vague claims that more data “might” be useful does not constitute sufficient justification to impose a new reporting regime upon small carriers that already must overcome significant challenges to provide broadband services in high-cost areas.

The Opinion and Order recognizes that ARMIS reports were originally imposed on price cap carriers – not rural LECs – in order “...to monitor two potential concerns raised by price cap regulation: first, that [price cap] carriers might lower quality of service, instead of being more productive, in order to increase short term profits; and second, that [price cap] carriers might not spend money on infrastructure development.”<sup>6</sup> If the Commission determines that certain ARMIS reports no longer fulfill their original functions, then it has the discretion to lift parts of the requirements as appropriate.<sup>7</sup> Yet the Commission has not demonstrated why, in order to reduce the regulatory burden on large price cap carriers, it is necessary to impose aspects of the price cap ARMIS regime on small broadband providers like rural LECs, for whom the new rules would be disproportionately burdensome.

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<sup>4</sup> *Id.*, 23 FCC Rcd 13648, ¶ 1.

<sup>5</sup> *Id.*, 23 FCC Rcd 13664-13665, ¶¶ 33, 35. The NPRM states that this data “would” be useful at ¶ 34 and ¶ 35, but offers no justification for this claim.

<sup>6</sup> *Id.*, 23 FCC Rcd 13649, ¶ 2 (citations omitted).

<sup>7</sup> 47 U.S.C. § 160.

The need to provide specific reasons for imposing new reporting requirements is evident in Opinion and Order, and contradicts the NPRM's unjustified tentative conclusion. Specifically, the Opinion and Order rejects the general assertion that ARMIS reports are required to "...ensure just and reasonably-priced services."<sup>8</sup> The Opinion and Order explains that it rejected arguments in favor of retaining certain reports because proponents did "...not explain how the specific ARMIS reports at issue here could be used to ensure just and reasonable rates."<sup>9</sup>

Yet, the NPRM itself suffers from the same lack of a specific explanation that the Opinion and Order exposed. The NPRM, like the arguments rejected by the Opinion and Order, does not explain how the imposition of new reporting rules will ensure just and reasonable rates, enhance customer service, or help deploy broadband infrastructure in high-cost areas served by rural LECs. Without references to potential benefits, it is impossible to weigh them against likely costs. Therefore, the Commission should not impose these wholly unjustified new reporting requirements on rural LEC broadband providers.

### **III. ANY DATA COLLECTED FROM RURAL LECS MUST REMAIN CONFIDENTIAL**

The NPRM inquires about the confidentiality of any data collected, should the Commission choose to impose new reporting requirements.<sup>10</sup> The NPRM also inquires whether Form 477 is the appropriate vehicle for additional reporting requirements.<sup>11</sup>

OPASTCO and WTA note that the Commission is already considering or implementing

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<sup>8</sup> Opinion and Order, NPRM, 23 FCC Rcd 13653-13654, ¶ 9.

<sup>9</sup> *Id.* See also, 23 FCC Rcd. 13657-13658, ¶¶ 14-15.

<sup>10</sup> *Id.*, 23 FCC Rcd 13665, ¶ 36.

<sup>11</sup> *Id.*

numerous Form 477 alterations in another proceeding,<sup>12</sup> and the benefits of complicating this form even further become more difficult to discern with each additional proposal. Nonetheless, should the Commission determine that further data collections from rural LECs are necessary, it remains imperative that the confidentiality of their broadband data be maintained, regardless of the mechanism used to collect it.

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.<sup>13</sup> 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 inadequately protected, rural LECs will be further dissuaded from making new investments in broadband infrastructure.

#### **IV. THE INITIAL REGULATORY FLEXIBILITY ANALYSIS IS DEFICIENT**

Neither the NPRM nor its accompanying Initial Regulatory Flexibility Analysis (IRFA) provide any information on the burdens the Commission's proposed new ARMIS reporting requirements would impose on rural LECs. Importantly, rural LECs typically lack the economies of scale enjoyed by price cap carriers currently subject to the ARMIS rules. Furthermore, both the NPRM and the IRFA fail to supply any cost projections or estimates for the public to consider and comment upon. Instead, the IRFA indicates that such facts will be gleaned from the record in this proceeding.<sup>14</sup>

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<sup>12</sup> *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriber Data*, WC Docket No. 07-38.

<sup>13</sup> 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.

<sup>14</sup> IRFA, 23 FCC Rcd 13694, ¶ 56.

However, it is impermissible for the Commission to shift the responsibility of providing cost and burden estimates to the public. As the Office of Advocacy of the United States Small Business Administration (SBA) has previously explained, this is the responsibility of the regulating entity that has tentatively concluded that a more burdensome reporting regime is desirable.<sup>15</sup> The Commission must supply cost and burden estimates as they relate to small carriers, so that commenting parties can provide input on the proposed burdens. Absent an analysis of the costs and burdens involved, the NPRM's tentative conclusions are premature with respect to rural LEC broadband providers, and no additional reporting requirements should be imposed on these carriers.

**V. EXEMPTING RURAL LEC BROADBAND PROVIDERS FROM THE PROPOSED ARMIS REPORTING REQUIREMENTS WOULD BE CONSISTENT WITH THE PAPERWORK REDUCTION ACT**

The NPRM seeks comment on its information collection requirements under the Paperwork Reduction Act, and how the burden might be reduced for small businesses with fewer than 25 employees under the Small Business Paperwork Relief Act.<sup>16</sup> Rural LECs have an average of 19 employees.<sup>17</sup> The Paperwork Reduction Act seeks to minimize the paperwork burden on small businesses resulting from the federal government's information collections, while ensuring that such collections are useful and provide the maximum possible benefits to the public.<sup>18</sup> Because the NPRM makes no effort to minimize burdens on small businesses, especially those with fewer than 25

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<sup>15</sup> 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.

<sup>16</sup> Opinion and Order, NPRM, 23 FCC Rcd 13667, ¶ 44.

<sup>17</sup> Telergee Alliance, 2008 Telergee Benchmarking Study, p. 64 (2008).

<sup>18</sup> 44 U.S.C. § 3501.

employees, or to explain the proposed information collection's benefits to the public, rural LEC broadband providers should not be subject to the proposed rules.<sup>19</sup>

## **VI. CONCLUSION**

The Commission should not require rural LEC broadband providers to compile certain ARMIS Reports. The need to impose such a burden has not been justified and would be counterproductive to the goal of further broadband investment in high-cost areas. The costs of adhering to requirements designed for large price cap carriers fall disproportionately hard on rural LECs. However, should the Commission impose additional reporting requirements, any data it receives from rural LECs should remain confidential. In addition, the NPRM does not adhere to the Regulatory Flexibility Act, and exempting rural LECs from the reporting requirements would be consistent with the goals of the Paperwork Reduction Act.

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<sup>19</sup> Should the Commission nonetheless determine that rural LECs must report this information, they should have an additional period of time, such as 24 months, to comply. The Commission could also create a simpler, less burdensome form for rural LECs if an exemption is not granted.

Respectfully submitted,

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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 14<sup>th</sup> day of November 2008, to those listed on the attached sheet.

By: /s/ Stephen Pastorkovich  
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**SERVICE LIST**  
**WC Docket No. 08-190 et. al.**

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