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

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications Act of 1996	)	
	)	
Developing a Unified Intercarrier Compensation	)	CC Docket No. 01-92
Regime	)	
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS
OF THE
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES
AND THE
WESTERN TELECOMMUNICATIONS ALLIANCE
IN SUPPORT OF THE
ALTERNATIVE PROPOSAL IN APPENDIX C OF THE *FURTHER NOTICE*

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I. INTRODUCTION AND SUMMARY

The Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO")[1] and the Western Telecommunications

[1] OPASTCO is a national trade association representing over 600 small incumbent local exchange carriers 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).

Alliance ("WTA")[2] urge the Federal Communications Commission ("Commission" or "FCC") to adopt the "Alternative Proposal" for reforming universal service and intercarrier compensation ("ICC"), attached as Appendix C to the *Further Notice*.[3]

The Alternative Proposal is a fair and balanced compromise that addresses the needs and concerns of consumers, service providers, regulators, and other stakeholders in a telecommunications and information services industry that continues to undergo rapid and extensive market and technological changes. It contains the minimum support and protections that rural, rate of return ("RoR")-regulated incumbent local exchange carriers ("ILECs") need to maintain their existing networks and continue to upgrade them for broadband. Failure by this Commission to act now on the Alternative Proposal will place additional strain on rural RoR ILECs' revenue streams and thus their ability to provide consumers throughout their territories with high-quality basic and advanced services at affordable rates. By implementing the Alternative Proposal now, the Commission will:

- Promote the deployment of broadband to rural and high-cost consumers throughout the country by requiring all high-cost support recipients to provide broadband throughout their service areas.

- Make broadband services more affordable to low-income consumers via the establishment of a Broadband Lifeline/Link Up Pilot Program.

- Strengthen the Universal Service Fund ("USF") contribution methodology by moving to a more sustainable telephone numbers and connections-based system.

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[2] WTA represents more than 250 small incumbent local exchange carriers across the 24 states west of the Mississippi River. Most WTA members serve fewer than 3,000 access lines overall, with fewer than 500 access lines per exchange.

[3] *High-Cost Universal Service Support,* WC Docket No. 05-337, *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, *Lifeline and Link Up,* WC Docket No. 03-109, *Universal Service Contribution Methodology,* WC Docket No. 06-122, *Numbering Resource Optimization,* CC Docket No. 99-200, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, *Developing a Unified Intercarrier Compensation Regime,* CC Docket No. 01-92, *Intercarrier Compensation for ISP-Bound Traffic,* CC Docket No. 99-68, *IP-Enabled* Services, WC Docket No. 04-36, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. Nov. 5, 2008) (*Further Notice*).

- Overhaul ICC by moving to unified and uniform rate levels over a reasonable period of time, thereby minimizing or eliminating arbitrage opportunities, phantom traffic, and traffic stimulation.

- Implement an alternative cost recovery mechanism for rural RoR ILECs, which will ensure that the stated universal service goals of the Telecommunications Act of 1996 ("1996 Act" or "the Act") continue to be fulfilled in these service areas.

- Rationalize and control the amount of high-cost support distributed to competitive eligible telecommunications carriers ("ETCs") by abolishing the identical support rule, thereby stabilizing the overall level of the USF.

- Permit modest increases in subscriber line charges ("SLCs") that are directly tethered to access charge reductions.

The net effect of the Alternative Proposal will be to provide stability and certainty in an industry that is experiencing arbitrage, access avoidance, gaming, and non-cost based support, all of which diminish consumer welfare. By taking action on the Alternative Proposal now, the Commission will take a large and necessary step forward toward achieving the goal of broadband that is universally available and affordable throughout America. It will enable not only increasing numbers of rural consumers to have access to advanced services, but also the ability of low-income households to afford broadband services and the necessary access devices.

The Alternative Proposal also recognizes the unique challenges of building and operating quality networks in high-cost rural areas, capable of providing basic and advanced services that are reasonably comparable to those provided in urban areas and at reasonably comparable rates.[4] Notably, the Proposal retains funding critical to the ability of rural RoR ILECs to meet the universal service objectives in the 1996 Act as well as comply with carrier-of-last-resort ("COLR")[5] and service quality obligations.

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[4] 47 U.S.C. §254(b)(3).

[5] In addition to being imposed by state statute or rule, COLR requirements are often imposed on carriers through loan covenants they have with their lenders (e.g., the Rural Utilities Service, CoBank, Rural

In addition, the Alternative Proposal acknowledges that RoR ILECs require special consideration because they must be provided with the opportunity to earn the authorized rate of return established by the Commission.[6] The supplemental interstate common line support ("ICLS") made available in the Alternative Proposal will provide that opportunity by: (1) compensating rural RoR ILECs for all revenues lost as a result of mandated reductions to ICC rates that are not otherwise recoverable through SLCs, for at least through the ten-year transition period, and (2) providing compensation for unrecoverable revenue loss attributable to losses in access lines and minutes of use for at least five years, subject to an annual cap, so long as the ILEC commits to the five-year broadband build-out requirement contained in the Proposal.[7]

From the perspective of rural RoR ILECs, the Alternative Proposal is far from ideal, as there are many provisions which, taken individually, inhibit these carriers' ability to maintain their networks and serve as COLRs.[8] Nevertheless, OPASTCO and WTA support adoption of the Proposal, recognizing that it is a compromise of the interests of numerous stakeholders. However, that support is conditioned upon the Proposal being adopted with all of the items included in OPASTCO and WTA's October 29, 2008 *ex parte* letter.[9] So long as the Alternative Proposal is adopted with all of these items, it will provide rural RoR ILECs with the stable and certain revenue flows

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Telecommunications Finance Cooperative, etc.). Thus, if rural RoR ILECs lack sufficient funding to act as COLRs, they can not only be deemed to violate state laws and regulations, but may also be in default under the terms of their loan agreements.

[6] *Further Notice*, Appendix C, paras. 309, 312.

[7] *Id.*, para. 321.

[8] For example, the elimination of the access charge regime; elimination of originating access without clear rules replacing this cost recovery; maintaining the status quo on ICC payments for IP/PSTN traffic rather than affirmatively requiring payment of ICC charges by IP/PSTN services during the transition; the new "additional costs" standard for determining reciprocal compensation rates; and a freeze imposed on rural RoR ILECs' study area high-cost support at 2010 levels.

[9] Letter from John N. Rose, President, OPASTCO, and Kelly Worthingon, Executive Vice President, WTA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, 01-92, WC Docket No. 05-337, Attach. at 2 (filed Oct. 29, 2008) (Corrected OPASTCO/WTA Oct. 29, 2008 *Ex Parte* Letter).

necessary for them to continue serving as COLRs and to meet the Commission's expectations for broadband availability throughout their service areas. In addition, the Alternative Proposal addresses or is consistent with all of the issues/goals on which the four Commissioners believe there is a growing measure of consensus.[10]

Recognizing that the Alternative Proposal is a compromise solution, OPASTCO and WTA do not seek to significantly alter its major provisions. However, we do seek certain minor clarifications and modifications that would serve the public interest, contained in Section II.G. of these comments.

OPASTCO and WTA urge the Commission to adopt the Alternative Proposal quickly so that all telecommunications carriers can begin the transition to stable and predictable USF and ICC rules. If the Commission chooses not to adopt the Alternative Proposal, however, it should adopt the more modest ICC reform plan for rural RoR ILECs previously submitted by OPASTCO and WTA[11] and attached as an Appendix to these comments.

II. THE COMMISSION SHOULD PROMPTLY ADOPT THE ALTERNATIVE PROPOSAL IN APPENDIX C OF THE *FURTHER NOTICE*

A. Prompt Commission action is needed to reform and stabilize the USF and ICC regimes to improve the ability of carriers to provide quality, affordable voice-grade and advanced services, including to those living in high-cost rural areas

Both OPASTCO and WTA have been actively advocating solutions and negotiating compromises for universal service and ICC reform over the last several years.

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[10] *Further Notice*, Joint Statement of Commissioners Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate, and Robert M. McDowell (Joint Statement).
[11] OPASTCO and WTA *ex parte*, CC Docket No. 01-92, WC Docket No. 05-337, CC Docket No. 96-45 (fil. Oct. 10, 2008).

As demonstrated by OPASTCO, WTA, and others, the record in these dockets shows that:

- Existing universal service policy fails to explicitly address today's broadband-oriented marketplace.
- Multiple ETCs have been designated in high-cost rural areas where it is uneconomical for even one COLR to exist absent support.
- A USF contribution methodology, based solely on interstate revenues, is becoming increasingly less sustainable.
- The existing ICC mechanisms are collapsing because of the multiplicity of rates (e.g., Internet service provider ("ISP")-bound, reciprocal compensation, intrastate access, interstate access, etc.) that are charged for the use of similar facilities.
- Varying rates have created the ability to arbitrage the ICC regime to either avoid or minimize payment by carriers using LEC networks to originate, transport, or terminate their customers' calls.
- Disputes regarding which ICC rates apply are compounded by inaction and jurisdictional disputes regarding the application of ICC charges to Internet protocol ("IP")/ public switched telecommunications network ("PSTN") traffic that competes directly with telecommunications traffic.
- "Phantom traffic" and "traffic stimulation" are undermining the integrity of the current ICC rules to the detriment of honest carriers and customers.

At this juncture, the rules governing the ICC and USF mechanisms have led to increasing disruptions and instability of critical revenue streams and investment planning for rural RoR ILECs due to: (1) the migration of substantial and escalating amounts of traditional telecommunications traffic and revenues to wireless and IP/PSTN service providers that are able to avoid, evade, or minimize their payment of access charges; and (2) the growth of the High-Cost universal service program far beyond its expected level due to the only recently controlled proliferation of competitive ETCs and to the identical support rule. It is critical to broadband investment in rural areas that the USF and ICC regimes be reformed and stabilized as soon as possible.

B. OPASTCO and WTA support adoption of the Alternative Proposal to reform the existing USF and ICC regimes

As explained in greater detail in Section II.E, the Alternative Proposal is far from perfect from the perspective of rural RoR ILECs and contains provisions that OPASTCO and WTA would object to on a stand-alone basis. However, given the increasing disruptions and threats to the sustainability of the existing USF and ICC mechanisms, OPASTCO and WTA support the Alternative Proposal as a fair and equitable compromise that will address existing and foreseeable industry conditions and promote increased access to affordable broadband services, including to consumers in high-cost rural areas. Specifically, the Alternative Proposal accomplishes this by:

- Stabilizing the overall level of the USF and establishing a predictable level of associated end-user charges by: (1) setting the USF contribution and monthly pass-through charges for residential telephone numbers at a fixed amount,[12] and (2) controlling support distributed to competitive ETCs.[13]

- Stabilizing the method of USF recovery by moving from contributions based on interstate revenues (which are declining and increasingly difficult to determine) to contributions based on telephone numbers for residential end users and ultimately to connections for business services.[14]

- Minimizing or eliminating regulatory arbitrage by moving to unified and uniform ICC rate levels for service providers that utilize the PSTN to complete their customers' calls.[15]

- Replacing revenues lost through the ICC rate reductions with reasonable increases to end-user charges and supplemental universal service support.[16]

- Reducing "phantom traffic" by requiring service providers that use the PSTN to complete their customers' calls to provide necessary identifying information so that they may be properly billed for their use of the network.[17]

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[12] *Further Notice*, Appendix C, para. 103.
[13] *Id*., para. 52.
[14] *Id*., para. 88.
[15] *Id*., paras. 188-193.
[16] *Id*., paras. 293-321.
[17] *Id*., paras. 328-334.

While it is difficult for rural RoR ILECs to agree with certain of the policy and rule changes, OPASTCO and WTA believe that taken as a whole, the Alternative Proposal will provide substantial benefits to consumers by providing much needed stability and certainty in the telecommunications industry. By acting now on the Alternative Proposal, this Commission can deliver the benefits of that stability and certainty to consumers.

C. Continued access to revenues from ICC and the USF is essential to the ability of rural RoR ILECs to continue providing quality voice-grade services and to provide increased access to broadband services

A key component of the Alternative Proposal is its requirement that ILECs commit to providing broadband Internet access service to all customers within their study areas in five years as a condition of receiving high-cost universal service support.[18] If this commitment is not made by the ILEC, another ETC may (through a reverse auction) be designated to serve the ILEC's study area as the COLR and be required to offer not only the supported voice-grade services, but also broadband Internet access service to all customers in the study area.[19] As a consequence, the Alternative Proposal provides a strong incentive for all ILEC recipients of high-cost universal service support to deploy broadband services throughout their entire service territories, including the rural and high-cost portions thereof. Whether served by the ILEC or another ETC (if the ILEC does not commit or is unable to provide universal broadband), consumers in high-cost rural areas will have much greater and earlier access to broadband services than will be the case without the universal service reforms included in the Alternative Proposal.

[18] *Id*., paras. 19-21, 28-31.
[19] *Id*., paras. 32-50.

It is extremely important to note however, that rural RoR ILECs will not be able to meet the broadband and other objectives set forth in the Alternative Proposal unless adequate supplemental support is furnished to offset their revenue losses.[20] Most rural RoR ILECs are subject to COLR and service quality requirements whereby they are obligated to offer high-quality telecommunications services to all of the consumers in their areas and, as ETCs, must provide those services at affordable and "reasonably comparable" rates. However, unlike large ILECs that serve primarily low-cost urban areas which offset the cost of serving their rural territories, rural RoR ILECs serve predominately high-cost, low density areas. To provide high-quality services at affordable rates to customers in these areas, rural RoR ILECs rely heavily on interstate and intrastate access charges and high-cost USF support to maintain and upgrade modern, ubiquitous network infrastructure.[21] In fact, the National Exchange Carrier Association ("NECA") estimates that the RoR ILECs that participate in their revenue pools, on average, receive about 60 percent of their net telephone company operating revenue from ICC (primarily interstate and intrastate switched access charges) and universal service funding.[22]

In recent years, as rural RoR ILECs have upgraded their networks, they have been able to deploy network facilities capable of providing broadband service as well as

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[20] *Id.*, paras. 320-321.

[21] Revenues from affordably priced local rates provide only a portion of the revenues that rural RoR ILECs require to maintain and upgrade a quality ubiquitous network. Through the years, the objective of this rate design was to ensure that customers in the low density areas served by these carriers would have affordable access to a quality network, while ensuring that the ILECs were provided with necessary additional revenues through access rates and universal service funding (constrained to the authorized rate of return) to recover the high costs necessary to deploy and maintain a ubiquitous network in a rural area.

[22] According to NECA, pool members receive on average about 29 percent of their total net telephone company operating revenue from ICC and about 31 percent from universal service funding. However, for the group of pool members who rely most heavily on ICC (i.e., those in the top 10 percent), reliance on ICC revenues increases to an average of 49 percent of total net operating revenue. *See*, NECA comments, CC Docket No. 01-92 (fil. May 25, 2005), p. 4.

traditional voice-grade services. Access revenues and high-cost USF support have been critical for the financing of these network upgrades and have been largely responsible for making advanced services available to many of the rural consumers in these service areas. If a significant portion of this access revenue were to be lost (either due to continued disintegration of the access charge system in the absence of Commission action or due to poorly executed ICC reform without adequate supplemental support), many or all rural RoR ILECs: (1) would initially stop network upgrades, (2) if the losses continued and increased, would default on loan payments to the Rural Utilities Service ("RUS") and other lenders, and (3) finally would be forced into a Chapter 7 or 11 bankruptcy, and likely be sold or dissolved.

Thus, it is crucial for rural RoR ILECs to retain sufficient ICC and USF revenues in order to continue providing affordable, high-quality voice-grade services while upgrading their networks for broadband capability. Assuming that the Commission's rules implementing Paragraphs 320 and 321 of Appendix C establish an adequate supplemental ICLS mechanism that complies with the goals and functions set forth in those paragraphs, the Alternative Proposal will provide sufficient ICC replacement funding for rural RoR ILECs while achieving greater stability and certainty regarding ICC issues for most participants in the telecommunications industry. Accordingly, OPASTCO and WTA believe that the Commission should adopt the Alternative Proposal.

D. The components of the Alternative Proposal that are targeted to rural RoR ILECs are essential to enabling these carriers to continue providing quality voice-grade services and to offer the benefits of broadband services to all customers in their service areas

The Alternative Proposal contains several provisions which have a substantial impact on rural RoR ILECs' revenues. Those provisions are:

- High cost loop support ("HCLS"), local switching support ("LSS"), ICLS, safety net additive and safety valve support are to be frozen at 2010 distribution levels by study area.[23]

- As a condition of receiving high-cost universal service support, ILECs must commit to offer broadband Internet access service to 100 percent of the potential customers in their study areas by the end of five years.[24]

- Transition over a ten-year period to a statewide uniform ICC rate (interstate, intrastate, and reciprocal compensation) of nearly zero for transport and termination.[25]

- Revenue recovery for ICC rate reductions:
  - ➢ Modest increases in the SLC caps.[26] Also, there is a Separations Joint Board referral proceeding that may lead to additional increases in end-user charges.[27]
  - ➢ Revenues lost due to mandated rate reductions that are not recovered from increases in the SLC caps will be recovered through supplemental ICLS.[28] This lasts at least through the ten-year transition.[29]

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[23] *Further Notice*, Appendix C, paras. 16, 30. The HCLS mechanism is currently capped and will potentially result in an approximate $287 million shortfall in cost recovery for rural ILECs in 2009. OPASTCO and WTA believe that 2010 frozen study area support levels should be established using annualized December 2010 distributions. December distributions were used in conjunction with the freeze of high-cost support for all other ILECs. *Id*. Applying the same freeze methodology for rural RoR ILECs' support amounts is appropriate and reasonable.

[24] *Id*., paras. 22, 25, 28-29. The Proposal allows rural RoR ILECs to automatically provide broadband via satellite to up to two percent of the customers within its study area with very high-cost loops without having to seek a waiver. A very high-cost loop is defined as a loop where the additional cost to provide broadband is in excess of 150 percent of the carrier's study area average loop costs. *Id.*, para. 27. This automatic exception does not prevent rural RoR ILECs from seeking a waiver to serve additional high-cost customers via satellite.

[25] *Id*., paras. 187-193. The Alternative Proposal indicates that it expects that its new "additional costs" standard will result in reciprocal compensation rates that are at or below $.0007. *Id.*, para. 193. A statewide rate of $.0007 or below is effectively a rate of zero for rural RoR ILECs because the cost to bill an ICC minute is greater than $.0007.

[26] *Id*., para. 293. Residential and single line business SLC caps increase from $6.50 to $8.00; non-primary residential line SLC caps increase from $7.00 to $8.50; and multi-line business SLC caps increase from $9.20 to $11.50.

[27] *Id.*, paras. 298-305.

[28] *Id*., paras. 320-321.

- Additional supplemental ICLS will be available to compensate rural RoR ILECs that have committed to the five-year broadband build-out requirement for unrecoverable revenue losses due to losses in access lines and interstate and intrastate minutes of use. This component of supplemental ICLS will provide rural RoR ILECs with the opportunity to earn the authorized rate of return, subject to an annual cap. This funding does not automatically end at the end of five years, but is subject to a Commission proceeding to determine if modifications are warranted.[30]

- Elimination of originating charges for all telecommunications traffic by the end of the ten-year transition to the new ICC regime.[31]

These revisions, along with other changes to the USF funding in the Alternative Proposal, will most likely not increase the size of the USF significantly. However, the significant reduction in access revenues and freeze on study area support, coupled with the broadband build-out requirement, will have significant impacts upon the finances and credit ratings of rural RoR ILECs. This is why the stability, certainty, and sufficiency of the combination of frozen high-cost support and supplemental ICLS is critical to the ability of these carriers to meet their obligations as ETCs, as well as their COLR, service quality, and other requirements that may be mandated by state law and necessitated by RoR regulation.[32] As noted in the Alternative Proposal:

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[29] *Id.*, fn. 836.
[30] *Id*., para. 321. Access lines and minutes of use continue to decline for a variety of reasons. Lines are declining primarily due to customers' elimination of second lines as they subscribe to broadband and to population declines in rural areas. Minutes of use are declining primarily because of line losses and access avoidance (e.g., phantom traffic and IP/PSTN services). The fixed network costs that were recovered by these lost revenues must still be recovered if a quality ubiquitous network with affordable end-user rates is to continue to be provided in high-cost, low density rural RoR ILEC service areas.
[31] *Id.*, para. 343.
[32] Rate-of-return regulation was designed to allow an ILEC to receive sufficient revenues from regulated services to recover its annual expenses and taxes, and to earn a reasonable return on its net investment (total investment for regulated services less depreciated investment). RoR regulation is essentially a compact or agreement (social contract) between regulators and ILECs whereby ILECs agree to provide high-quality, affordable communications services throughout low density, high-cost areas that are reasonably comparable to the services and rates offered in urban areas. RoR ILECs must comply with more onerous federal and state regulatory requirements than ILECs under other forms of regulation. This may include proceedings to set their rate levels, audits of costs to determine if the ILECs are earning the proper return, reporting requirements, etc. The commissions (federal and state), under this social contract, agree to provide the ILECs with revenues (from rates and/or support funding) sufficient to cover: (a) annual expenses and taxes, and (b) an opportunity to earn a reasonable rate of return on the net investment. The

> …because of their different regulatory treatment, price cap incumbent LECs and rate-of-return incumbent LECs should be treated differently. …. We recognize that interstate rate-of-return carriers present a special situation, because under our rules they must be provided an opportunity to earn the rate of return established by our orders.[33]

The supplemental ICLS made available in the Alternative Proposal for RoR ILECs will provide that opportunity by: (1) compensating them for all revenues lost as a result of mandated reductions in ICC rates for at least ten years, and (2) providing compensation for unrecoverable revenue loss attributable to losses in access lines and interstate and intrastate minutes of use for at least five years, subject to an annual cap, so long as the rural RoR ILEC commits to the five-year broadband build-out requirement contained in the Proposal.[34]

A sufficient supplemental ICLS mechanism is absolutely essential for rural RoR ILECs to continue to maintain and upgrade their networks. Subsequent to the freeze of rural RoR ILECs' study area support in 2010 under the Alternative Proposal, high-cost support will no longer be adequate to recover increased network costs (such as those for future broadband upgrades) nor will it be adequate to provide the opportunity to earn the rate of return authorized by the Commission. As a result, the two components of the supplemental ICLS in the Alternative Proposal are absolutely critical to rural RoR ILECs' and their ability to continue serving as COLRs and upgrading their networks to

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rate of return is established by the regulators and is a proxy for the return that an ILEC may earn if its funds were invested in another enterprise. This long-standing regulatory social contract between ILECs and regulators was, and continues to be essential in ensuring that communications services are deployed where basic and advanced services would not otherwise be provided because of the high cost to provide and maintain service. Without this social contract between regulators and RoR ILECs that ensures that sufficient revenues are available to earn a reasonable return on costs invested in high-cost networks, lenders would not provide the massive amount of capital that makes these networks possible and the RoR ILEC borrowers would not be able to make the loan payments. As a result, many high-cost rural areas would lack access to affordable, high-quality wireline services, and some consumers would not have access to any service at all.

[33] *Further Notice*, Appendix C, paras. 309, 312.

[34] *Id.*, para. 321.

offer broadband to all potential customers.[35] OPASTCO and WTA could not support the Proposal without the inclusion of this supplemental support.

E. While OPASTCO and WTA support adoption of the Alternative Proposal as a compromise solution to USF and ICC reform, it is far from ideal from the perspective of rural RoR ILECs and their customers

Were OPASTCO and WTA to draft their own comprehensive proposal for USF and ICC reform, it would not look like the Alternative Proposal contained in Appendix C. That said, the Alternative Proposal, taken as a complete package, is a fair, equitable compromise that provides the telecommunications industry and its consumers with a level of stability and certainty in an ever-changing environment. Taken separately, many individual provisions of the Alternative Proposal work against the ability of rural RoR ILECs to earn an authorized rate of return. Additionally, there are many provisions which, taken individually, inhibit rural RoR ILECs' abilities to earn sufficient revenues to continue to maintain and upgrade their networks in a manner which allows them to serve as COLRs and continue deploying broadband throughout their service areas. For instance:

- Currently, HCLS is capped. Under the Alternative Proposal, the levels of HCLS, LSS, ICLS (excluding the supplemental ICLS), safety net additive and safety valve support for rural RoR ILECs will be frozen by study area at 2010 levels.[36] As new costs are incurred (e.g., future broadband build-out costs) or as revenues are lost, the High-Cost program will no longer provide increased support to help

[35] Considering the Alternative Proposal's study area freeze of high-cost support, combined with the broadband build-out requirements, it is unlikely that any rural RoR ILEC will earn in excess of the authorized return level (i.e., "over-earnings"). However, state commissions generally have the authority to review and audit rural RoR ILECs, and if they have this concern regarding any particular ILEC, may audit them and take appropriate actions, if necessary. In addition, the ongoing USF audits being overseen by the FCC's Office of Inspector General will provide additional protections against waste, fraud, and abuse. These protections provide an effective means of assuring accountability, guarding against over-earnings and assuring the Commission, Congress, and the American public that USF dollars are used prudently.

[36] *Further Notice*, Appendix C, paras. 16, 30. This freeze should be based on annualized December 2010 distributions, consistent with the freeze methodology for all other ILECs.

carriers close the gap between their revenues and costs, much less to earn a return on their investment.

- Rural RoR ILECs are in various phases of network upgrades, thereby making the five-year broadband build-out requirement[37] very costly to complete for many of these carriers. For companies that must complete a substantial portion of their broadband build-out in 2009 and thereafter (and often the last 20 percent of a broadband build-out in a rural area is more expensive than the first 80 percent), their frozen 2010 high-cost support will not reflect any of those build-out costs.

- Although OPASTCO and WTA believe that separate intercarrier compensation regimes for access and reciprocal compensation should be maintained, the Alternative Proposal justifies unification of all terminating rates based on section 251(b)(5) of the 1996 Act.[38] A result of this justification is that originating access will be eliminated by the end of the ten-year transition but at what pace this will occur has yet to be determined.[39] If rural RoR ILECs are unable to recover these originating access revenues via the supplemental ICLS, the funding in the Alternative Proposal would be grossly insufficient for these carriers to have the opportunity to earn the authorized return, let alone to continue building-out a broadband-capable network.

- The ultimate terminating rate at the end of the ten-year transition based on the new "additional costs" standard in the Alternative Proposal is likely to be close to zero.[40] The costs that rural RoR ILECs incur to bill other carriers for the use of their networks will almost surely exceed the revenues received from this rate level. OPASTCO and WTA believe that rural RoR ILECs should be able to charge a reasonable rate for traffic termination on their networks and that service providers using those networks to complete their customers' calls should pay a reasonable rate for that use.

- The costs to develop and litigate the new "additional costs" standard articulated in the Alternative Proposal will be significant.[41]

- IP/PSTN service providers are not affirmatively required to pay for their customers' use of the network until the end of the ten-year transition. These services will be subject to the final uniform termination rates. Until that time, the status quo is maintained for this traffic.[42] However, rather than giving these providers a competitive advantage during the transition, if IP/PSTN traffic was

[37] *Id*., para. 55.
[38] *Id*., paras. 153, 164, 185, 215-216.
[39] *Id*., para. 224.
[40] *Id*., para. 193.
[41] There is likely to be significant disagreement with the provisions of this standard leading to protracted and costly litigation. *See, Id.*, paras. 238-269.
[42] *Id*., fn 555.

assessed ICC termination charges during the transition, the supplemental ICLS could be reduced and consumers nationwide would benefit from a reduced USF.

These provisions in the Alternative Proposal will result in lost or forgone revenues for rural RoR ILECs. As a result, rural RoR ILECs will be heavily dependent upon the supplemental ICLS and other provisions in the Alternative Proposal that were included from OPASTCO and WTA's October 29, 2008 *ex parte* letter[43] to continue to be able to serve as COLRs and meet the Commission's expectations for broadband availability throughout their service areas. Hence, so long as all of the items from OPASTCO and WTA's *ex parte* letter are included, we support the adoption of the Alternative Proposal, notwithstanding its shortcomings and defects, as part of an overall compromise in order to achieve USF and ICC reform now.

F. The Alternative Proposal addresses or is consistent with all of the "consensus issues" raised in the four Commissioners' Joint Statement

Attached to the *Further Notice* is a Joint Statement issued by Commissioners Copps, Adelstein, Tate, and McDowell. In their Joint Statement, the Commissioners specify seven issues/goals for USF and ICC reform on which they believe there is a tentative but growing measure of consensus. The Alternative Proposal addresses or is at least consistent with all seven of these items. Specifically:

1. Moving intrastate access rates to interstate access levels over a reasonable period of time

The Alternative Proposal provides a two-year transition to lower intrastate access rates to interstate levels and provides for further reductions in terminating rates over the following eight years to unified levels determined by state commissions using the methodology specified by the FCC.

[43] Corrected OPASTCO/WTA Oct. 29, 2008 *Ex Parte* Letter, Attach. at 2.

2. Not unduly burdening consumers with increases in their rates untethered to reductions in access charges

The Alternative Proposal calls for increases in the SLC cap for residential and single-line business lines from $6.50 to $8.00, the non-primary residential line cap from $7.00 to $8.50, and the multi-line business cap from $9.20 to $11.50.[44] These modest increases in the SLC caps are specifically intended to allow ILECs to recover at least part of the revenues lost from mandated interstate and intrastate access charge reductions, while also guarding against the potential adverse impact on consumers of higher end-user charges.[45]

3. Addressing phantom traffic and traffic stimulation

The Alternative Proposal addresses phantom traffic by requiring originating service providers to provide necessary call signaling and detail information to enable terminating carriers to bill the appropriate service provider for facilities used to terminate the call. If calls are received without the necessary identifying information to enable billing to the service provider originating the call, the terminating carrier may charge its highest terminating rate to the service provider delivering such traffic.[46]

Traffic stimulation is viewed as a symptom of the current disparate intercarrier compensation regimes that will be addressed through the proposed transition to a uniform terminating rate established by each state.[47] The Alternative Proposal further notes that

[44] *Further Notice*, Appendix C, para. 293.
[45] *Id*., para. 289. OPASTCO and WTA recognize that some carriers will not have any intrastate access rate reductions in stage one of the transition because their intrastate access rates are currently equal to or lower than their interstate rates.
[46] *Id*., para. 322.
[47] *Id*., para. 180.

the FCC has an open proceeding to specifically deal with this situation in the unlikely event that traffic stimulation problems persist.[48]

4. Implementing an alternative cost recovery mechanism in certain circumstances

The Alternative Proposal limits access to additional universal service support to ILECs that meet necessary and specific preconditions.[49] For example, recognizing that interstate RoR-regulated ILECs must be provided the opportunity to earn the authorized rate of return,[50] the proposal allows these carriers to automatically qualify for supplemental ICLS to replace revenues lost as a result of mandated reductions in intercarrier charges that are not otherwise recoverable through increases in SLCs. In addition, for those rural RoR ILECs that have committed to the five-year broadband build-out requirement, they would also receive supplemental ICLS to allow them to replace revenues lost as a result of losses in access lines and minutes of use, subject to an annual cap.[51]

5. Eliminating the identical support rule and moving over time towards support based on a company's own cost

The Alternative Proposal eliminates high-cost support to competitive ETCs over a five-year transition period, thereby abolishing the identical support rule.[52] The Alternative Proposal also seeks comment through a Further Notice of Proposed Rulemaking on an appropriate universal service mechanism focused on the deployment and maintenance of advanced mobile wireless services in high-cost and rural areas.[53]

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[48] *Id*., fn. 840.
[49] *Id*., para. 315.
[50] *Id*., para. 320.
[51] *Id*., para. 321.
[52] *Id*., paras. 17, 51-52.
[53] *Id*., para. 339.

6. Emphasizing the importance of broadband to the future of universal service

The Alternative Proposal makes broadband the centerpiece of its proposed revisions to the USF programs. The Proposal states:

> Today we take a monumental step toward our goal of ensuring that broadband is available to all Americans. We do this by requiring that all recipients of high-cost support offer broadband Internet access service to all customers within their supported service areas as a condition of receiving future support.[54]

The Alternative Proposal also establishes a Broadband Lifeline/Link Up Pilot Program that would make broadband service and the necessary access devices available at a significant discount to low-income households. This will assist in bringing the benefits of broadband Internet access service to consumers that might not otherwise be able to afford it.

7. Clarifying the implementation of the Alaska native regions and tribal lands exception to the CETC cap adopted on May 1, 2008, and the need for special consideration for such areas

While the Alternative Proposal does not specifically address the provisions of the Commission's May 1, 2008 Cap Order exempting Alaska native regions and tribal lands from the caps on competitive ETC support, it does state that its high-cost support and ICC provisions "…do not apply to providers operating in Alaska, Hawaii, or any U.S. Territories and possessions."[55] OPASTCO and WTA believe that this exemption should also be provided for carriers serving tribal lands.

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[54] *Id.*, para. 4. *See also*, paras. 19-59.
[55] *Id.*, paras. 13, 186.

G. Certain minor clarifications and modifications should be made to the Alternative Proposal

OPASTCO and WTA support adoption of the Alternative Proposal. However, certain minor modifications that do not significantly alter any of the Proposal's major provisions would be appropriate for clarification purposes and to serve the public interest by providing additional consumer benefits. They are as follows:

1. The elimination of originating charges by the conclusion of the ten-year transition necessitates two clarifications to language in the Alternative Proposal

OPASTCO and WTA had thought that originating rates would be capped at their existing levels for the duration of the ten-year transition, with a future proceeding to determine how to address those rates after terminating rates had been reduced to their final levels. Instead, the Alternative Proposal specifies that originating access charges are to be eliminated by the conclusion of the transition to the new regime,[56] and a Further Notice of Proposed Rulemaking seeks comment on the appropriate transition for eliminating those charges over the ten-year period.[57] To address this, OPASTCO and WTA recommend that two clarifications be made in the Proposal.

First, the Commission should clarify that the first component of the supplemental ICLS, which "…compensates rural rate-of-return incumbent LECs ***for all of the revenues lost as a result of the mandated reductions in intercarrier compensation rates*** that are not otherwise recoverable through increases in SLCs…"[58] will compensate these carriers for the mandated reductions in both terminating *and* originating rates. As noted in the

[56] *Id*., para. 224.
[57] *Id.*, para. 343.
[58] *Id.*, para. 321 (Emphasis added).

Proposal, this support would remain available at least through the ten-year transition period.[59]

Second, the language that comprises the "Rural Transport Rule"[60] should be slightly modified to account for the fact that rural RoR ILECs will no longer receive originating access compensation from toll providers. Therefore, it is necessary and appropriate to clarify that these carriers are not financially responsible for transporting a toll call, or any call in which they are not the end user's retail service provider. We recommend that the following additions in bold be made to the existing language in the last bullet of Paragraph 270:

> *Notwithstanding the forgoing, for local and extended area service (EAS) calls (**based on the rural rate-of-return incumbent LECs local calling area**) made by a rural rate-of-return incumbent LEC's customer to a non-rural carrier's customer, the rural rate-of-return incumbent LEC will be responsible for transport to a non-rural terminating carrier's point of presence (POP) when it is located within the rural rate-of-return incumbent LEC's service area. **For all calls**, when the non-rural terminating carrier's POP is located outside the rural rate-of-return incumbent LEC's service area, the rural rate-of-return incumbent LEC's transport and provisioning obligation stops at its meet point and the non-rural terminating carrier **or another service provider** is responsible for the remaining transport to its POP.*

2. The "Rural Transport Rule" should become effective at the beginning of the transition period

OPASTCO and WTA believed that the "Rural Transport Rule" would be implemented at the beginning of the ten-year transition. However, the Proposal indicates that the network edge default rules, including the Rural Transport Rule, would not

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[59] *Id.*, fn. 836.
[60] *Id.*, para. 270.

become effective until after carriers are charging the final uniform reciprocal compensation rate, at the end of the ten-year transition.[61]

The Commission should make the Rural Transport Rule effective at the beginning of the transition, rather than the end. During the ten-year transition, rural RoR ILECs should not be held financially responsible for transporting "local" and EAS calls beyond their network boundaries to carriers that choose not to have a point of presence in their service territories. The imposition of excessive transport costs on rural RoR ILECs could place upward pressure either on rural end-user rates, potentially causing them to be unaffordable or no longer reasonably comparable with rates available to urban customers, or on the supplemental ICLS mechanism. Therefore, immediate implementation of the "Rural Transport Rule" is consistent with the universal service principles in the 1996 Act.

3. Language should be added to the justification of the new "additional costs" standard that accounts for the unique status of RoR ILECs

OPASTCO and WTA are concerned about the new "additional costs" methodology in the Alternative Proposal for determining the final statewide uniform terminating intercarrier rates and, more specifically, the way in which that methodology is justified. The Proposal would revise the Commission's interpretation of "additional costs" to mean "incremental costs" as traditionally defined.[62] However, as the Proposal itself indicates, "…a carrier would not make a profit by recovering its incremental cost."[63] This is highly problematic for RoR ILECs who, under the Commission's rules, are guaranteed the opportunity to earn an authorized rate of return on their interstate

[61] *Id*.
[62] *Id.*, para. 257.
[63] *Id.*, para. 260.

investments, which the Commission explicitly recognizes later in the Proposal.[64] Sufficient supplemental universal service support will be needed for the foreseeable future to prevent this new ratemaking methodology from producing confiscatory rates for RoR carriers.[65]

Although OPASTCO and WTA do not agree with the proposed "additional costs" standard, we also recognize that it is a major provision in the Proposal and therefore do not seek to change it. However, it would be appropriate for the Commission, in its justification of this new ratemaking methodology, to include language that recognizes the unique status of RoR ILECs. Specifically, Paragraph 263 should be modified as follows in bold:

The first sentence should be changed to:

> *Moreover our decision to adopt a unified intercarrier compensation methodology is in no way arbitrary or adopted with any confiscatory purpose with respect to* ***price cap ILECs and non-ILECs****.*

At the end of this Paragraph, the following language should be added:

> ***We recognize that interstate rate-of-return carriers present a special situation, because under our rules they must be provided an opportunity to earn the rate of return established by our orders. As a result, the proceeding initiated in the attached Further Notice will evaluate if they have been provided with that opportunity.***

4. The rates charged for transit service should remain tariffed and subject to dispute pending any revisions that may be adopted in a future proceeding

As the Commission should be aware, there is little if any competition for transit service in most rural study areas. This results in rural RoR ILECs having virtually no

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[64] *Id.*, paras. 312, 320, 321.

[65] Absent supplemental support, the only other option to avoid confiscatory rates for RoR ILECs would be to increase their permissible end-user charges to levels that are unaffordable and/or not reasonably comparable to the rates charged in urban areas. However, this would be entirely at odds with the universal service principles contained in the 1996 Act. 47 U.S.C. §254(b)(1), (3).

bargaining power or negotiating position with the carrier that serves as the transiting provider. Unfortunately, the Order portion of the Alternative Proposal does not address the rules governing transit service; instead it raises the issue in a Further Notice of Proposed Rulemaking.[66] Therefore, to ensure that consumer calls are charged just and reasonable rates for essential transit service, the Order portion of the Proposal should state that these rates are to remain tariffed and subject to dispute pending any revisions that may be adopted as a result of the proceeding in the Further Notice of Proposed Rulemaking. In no instance should the rates charged by transiting providers to rural RoR ILECs be left solely to negotiation.

5. If a reverse auction fails to produce a winner in a rural ILEC service area, the Commission should give the rural ILEC another opportunity to provide broadband throughout its study area with a higher level of support

OPASTCO and WTA have consistently stated in their previous comments that reverse auctions should not be used to determine the COLR and its support amount in rural service areas.[67] Nevertheless, we recognize that the reverse auctions provision for "Unserved Study Areas" is a significant part of the Alternative Proposal,[68] and we do not seek to eliminate it. However, if an auction produces no winner using the rural ILEC's current high-cost support amount as the reserve price, it is a clear indication that the rural ILEC's existing support amount is inadequate for *any* carrier to be capable of providing broadband to 100 percent of the customer locations within the study area.

[66] *Further Notice*, Appendix C, para. 344.
[67] *For example*, OPASTCO comments, WC Docket No. 05-337, CC Docket No. 96-45 (fil. Apr. 17, 2008), pp. 16-21.
[68] *Further Notice*, Appendix C, paras. 32-50.

Many rural ILECs are already capable of providing broadband Internet access service to the large majority of the customers in their study area.[69] It would therefore not serve the public interest to conduct another reverse auction for these areas that produced no winner the first time,[70] without first giving the rural ILEC another opportunity to provide broadband to 100 percent of its potential customers with a higher level of support. The Alternative Proposal establishes a five-year broadband build-out period for ILECs, while allowing auction winners ten years to serve 100 percent of the potential customers.[71] Thus, by determining the appropriate amount of support in which to enable a rural ILEC to achieve universal broadband availability in its study area, all of the customers will have access to broadband service in potentially half the time than they would with an auction winner. Furthermore, by giving rural ILECs another opportunity to provide ubiquitous broadband service with a higher level of support, it would avoid needlessly uprooting customers that have come to rely upon the ILEC as the provider for most, if not all, of their communications service needs.

6. Two additional minor modifications would improve the Alternative Proposal

First, the exemption for providers in Alaska, Hawaii, and the U.S. Territories and possessions from the new USF and ICC rules[72] should be expanded to include providers serving tribal lands. Also, additional discounts should be provided for residents of tribal lands under the Broadband Lifeline/Link Up Pilot Program, similar to those provided

[69] An April 2007 survey of OPASTCO's membership found that on average, respondents were able to make broadband available to over 90 percent of their customer base. *See*, OPASTCO comments, GN Docket No. 07-45 (fil. May 16, 2007), p. 3.
[70] *Further Notice*, Appendix C, para. 47.
[71] *Id.*, paras. 55-56.
[72] *Id.*, paras. 13, 186.

under the traditional Lifeline/Link Up program.[73] The circumstances faced by providers serving tribal lands are similar to those faced in the areas that are already exempted from the USF and ICC provisions of the Alternative Proposal. For example:

- The Commission has recognized the problem of low telephone penetration rates for voice-grade services on Reservations, let alone broadband.

- Remote locations, low population density, long distances, and hostile terrain combine to make Reservations costly to serve.

- Capping or otherwise restricting revenues from universal service and ICC would make it difficult to address the basic penetration issues.

- The CETC Cap Order of May 1, 2008 exempts competitive ETCs serving tribal lands from the cap on high-cost support due to penetration concerns. Capping the wireline incumbent in these areas would be illogical, anti-competitive, provide an unfair advantage to the wireless carrier, and hinder broadband deployment.

- The three proposals in the *Further Notice* exempt Alaska, Hawaii, and the U.S. territories and possessions from the USF and ICC reforms due to very different attributes and related cost issues compared with the continental United States. Tribal lands are as much of an outlier from the norm for the continental United States as these exempted areas, if not more so.

Second, there should be an explicit waiver process for extraordinary circumstances where a rural RoR ILEC's frozen 2010 study area level of support[74] is insufficient to achieve ubiquitous broadband availability within the prescribed five-year timeframe. For example, rural RoR ILECs that make the requisite broadband build-out commitment may fail to meet annual build-out milestones through no fault of their own due to delays in obtaining required loans, delays or inability to obtain equipment and/or construction services from third party vendors, and delays due to unusually severe weather. While we do not seek to create loopholes in the Alternative Proposal's

[73] 47 C.F.R. §54.403(a)(4).
[74] *Further Notice*, Appendix C, para. 16.

universal service rules, we do believe that there may well be certain circumstances that will require special attention on the part of the Commission.

III. IF THE COMMISSION DECIDES NOT TO ADOPT THE ALTERNATIVE PROPOSAL, IT SHOULD ADOPT THE COMPROMISE INTERCARRIER COMPENSATION REFORM PLAN FOR RURAL ROR ILECS SUBMITTED BY OPASTCO AND WTA ON OCTOBER 10, 2008

On October 10, 2008, OPASTCO and WTA filed with the Commission a plan for intercarrier compensation reform for rural RoR ILECs.[75] A copy of the OPASTCO/WTA Plan is attached as an Appendix to these comments. The OPASTCO/WTA Plan represents a reasonable compromise between maintenance of the status quo and the various proposals for ICC reform currently pending before the Commission. The OPASTCO/WTA Plan recognizes that rural RoR ILECs are not only very different from larger carriers, but they also greatly differ from each other. Should the Commission decide not to implement the Alternative Proposal, the OPASTCO/WTA Plan would represent a positive initial step in reforming intercarrier compensation for rural RoR ILECs in a manner that would enable them to continue investing in their networks to provide an evolving level of broadband services to greater numbers of rural consumers. The OPASTCO/WTA Plan (along with referenced filings by OPASTCO and WTA) is consistent with the "consensus issues" identified in the Joint Statement of Commissioners Copps, Adelstein, Tate, and McDowell. Specifically:

1. Moving intrastate access rates to interstate access levels over a reasonable period of time

The OPASTCO/WTA Plan reduces intrastate originating and terminating access rates to interstate levels over a three-year transition period, with an option for carriers to

[75] OPASTCO and WTA *ex parte*, CC Docket No. 01-92, WC Docket No. 05-337, CC Docket No. 96-45 (fil. Oct. 10, 2008).

make further reductions. It calls for a Commission proceeding in Year 2 to evaluate how the plan is working and to permit early modifications and adjustments.

2. Not unduly burdening consumers with increases in their rates untethered to reductions in access charges

The OPASTCO/WTA Plan has an affordable end-user rate benchmark mechanism and associated maximum SLC increase.

3. Addressing phantom traffic and traffic stimulation

The OPASTCO/WTA Plan reduces arbitrage opportunities through access rate unification. While the OPASTCO/WTA Plan does not include specific provisions to address phantom traffic, the Plan's unification of carriers' interstate and intrastate access rates will help to reduce the arbitrage incentives that, in part, cause carriers to misidentify or conceal the source of traffic. In addition, in February 2008, OPASTCO and WTA filed a written *ex parte* presentation[76] supporting adoption of the Petition for Interim Order to address phantom traffic filed by NECA on January 22, 2008.[77] Also, while the OPASTCO/WTA Plan does not specifically address traffic stimulation, OPASTCO and WTA each filed comments in WC Docket No. 07-135 supporting the Commission's goal of restricting such activities by a very small number of ILECs, and provided constructive solutions to address this problem in a simple and efficient manner.[78]

[76] OPASTCO and WTA *ex parte*, CC Docket No. 01-92 (fil. Feb. 15, 2008).
[77] NECA, Petition for Interim Order, CC Docket No. 01-92 (fil. Jan. 22, 2008). NECA's petition requests that the Commission extend its existing call signaling rules to all interconnected voice service providers and to all types of voice traffic terminating on the PSTN, regardless of jurisdiction or the technology used. In addition, the petition requests that the Commission clarify that the accurate calling party number (CPN) of the originating end user must be transmitted with all calls, regardless of jurisdiction, and that all signaling information be transmitted unaltered by all intermediate providers. The petition also recommends that the Commission clarify that the originating and terminating telephone numbers of a call be used as a default for determining the proper jurisdiction for billing purposes.
[78] OPASTCO comments, WC Docket 07-135 (fil. Dec. 17, 2007); WTA comments, WC Docket 07-135 (fil. Dec. 17, 2007).

4. Implementing an alternative cost recovery mechanism in certain circumstances

The OPASTCO/WTA Plan proposes a Restructure Mechanism (RM) that provides critical revenue stability to maintain service quality and enable investment in broadband and other network upgrades as access rates are reduced. The Plan also uncaps or rebases the HCLS mechanism to encourage and enable upgrades of rural loop facilities necessary to provide reasonably comparable access to advanced services. And, a "Rural Transport Rule" is included to limit the financial obligation of rural RoR ILECs for the transport of non-access traffic beyond their networks.

5. Eliminating the identical support rule and moving over time towards support based on a company's own cost

While the OPASTCO/WTA Plan focuses primarily on intercarrier compensation reform, both OPASTCO and WTA have previously supported the elimination of the identical support rule and the basing of competitive ETC support on each carrier's own costs.[79]

6. Emphasizing the importance of broadband to the future of universal service

The primary focus of the OPASTCO/WTA Plan is to encourage and enable rural RoR ILECs to make the necessary investments to provide modern, affordable broadband services to consumers throughout their service areas.

7. Clarifying the implementation of the Alaska native regions and tribal lands exception to the CETC cap adopted on May 1, 2008, and the need for special consideration for such areas

OPASTCO and WTA support the provisions of the CETC Cap Order of May 1, 2008 that exempted Alaska native regions and tribal lands from the cap on competitive

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[79] *For example*, OPASTCO comments, WC Docket 05-337, CC Docket 96-45 (fil. Apr. 17, 2008), pp. 9-16; WTA comments, WC Docket 05-337, CC Docket No. 96-45 (fil. Apr. 17, 2008), p. 22.

ETC support. These areas have historically suffered from low penetration rates for basic and advanced services due to sparse populations and long distances, and universal service funding has been a critical part of ensuring that consumers in these areas are able to have access to services at affordable rates. OPASTCO and WTA believe that because of the unique nature of these areas, the Commission should exempt Alaska native regions and tribal lands from the universal service funding and intercarrier compensation reform requirements that emerge from this proceeding.

IV. CONCLUSION

For the reasons discussed in the forgoing comments, the Commission should promptly adopt the Alternative Proposal in Appendix C of the *Further Notice*. The Alternative Proposal is a fair and equitable compromise for reforming universal service and intercarrier compensation that will hasten the deployment of broadband to all Americans. It also provides rural RoR ILECs with the bare minimum needed for these carriers to continue functioning as COLRs and deploying broadband throughout their service areas. If, however, the Commission decides not to adopt the Alternative Proposal, it should adopt OPASTCO and WTA's more modest intercarrier compensation reform plan for rural RoR carriers, attached to these comments

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Respectfully submitted,

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November 26, 2008

APPENDIX

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

[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.

rural residents. In addition, the growing uncertainty surrounding the current intercarrier 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

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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
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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:
   - <u>OPTION 1</u>: Originating and terminating access rates for end-office switching remain at the unified interstate level.
   - <u>OPTION 2</u>: 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. End-User Rate Benchmark.

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. Commission Action. The Commission would enact the following:

A. Restructure Mechanism.

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. FCC Proceeding. 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.

CERTIFICATE OF SERVICE

I, Brian Ford, hereby certify that copies of OPASTCO and WTA's comments were sent on this, the 26th day of November, 2008 by electronic mail, to those listed on the attached sheet.

By: /s/ Brian Ford
Brian Ford

SERVICE LIST
WC Docket Nos. 05-337, 03-109, 06-122, 04-36
CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68
FCC 08-262

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