

OPASTCO

**January – December
2004**

REGULATORY AFFAIRS

**Organization for the Promotion and
Advancement of Small Telecommunications Companies**

OVERVIEW

The following pages list the formal documents that OPASTCO has produced during 2004 for consideration in various federal arenas. The list includes comments, letters, and *Ex Partes* OPASTCO filed at the Federal Communications Commission (FCC) and other government agencies.

OPASTCO is a member-run organization with a professional staff dedicated to advancing the small telecommunications carrier agenda that the membership establishes. There are several OPASTCO committees that address the various legislative and regulatory issues facing small telecommunications carriers. In addition to making presentations at the OPASTCO conventions, OPASTCO is also frequently called upon to make presentations to state associations and other industry groups. The Regulatory Affairs Department consists of Stuart Polikoff, Director of Government Relations; Stephen Pastorkovich, Director of Business Development/Senior Policy Analyst and Jeffrey Smith, Policy Analyst.

FCC FILINGS

Federal-State Joint Board on Universal Service

Federal-State Joint Board on Universal Service Seeks Comment On Certain of the Commission's Rules Relating to High-Cost Universal Service Support CC Docket No. 96-45

Type OPASTCO Reply Comments

Date December 14, 2004

Subject(s) The Joint Board's Public Notice seeking comment on issues related to the high-cost universal service support mechanisms for rural carriers and the appropriate rural mechanism to succeed the five-year plan adopted in the Rural Task Force Order.

OPASTCO High-cost support for all rural telephone companies should continue to be based on their study area average embedded costs. Similarly, support for competitive local exchange carriers (CETCs) in rural service areas should be based on their own embedded costs.

The record in this proceeding strongly supports continued use of the complete statutory definition of "rural telephone company" for determining which carriers are "rural" for high-cost universal service purposes. Like OPASTCO, a majority of the commenters advocated in favor of the continued use of embedded costs as the basis of support for rural ILECs. These commenters urged the Joint Board to reject the use of forward-looking economic cost (FLEC) estimates. There is also substantial support in the record for basing support for competitive local exchange carriers (CETCs) in rural service areas on their own embedded costs. Lastly, the existing support calculation methodology for rural ILECs should be maintained with the exception of the cap on high-cost loop support, which should be lifted.

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

**Parties Are Invited to Comment on U.S. Cellular Petition
For Designation as an Eligible Telecommunications Carrier
In the State of North Carolina
DA 04-3536**

Type OPASTCO Reply Comments

Date December 7, 2004

Subject(s) The Commission's Public Notice seeking comment on U.S. Cellular's petition for designation as an eligible telecommunications carrier (ETC) in North Carolina.

OPASTCO U.S. Cellular's application for ETC designation should be stayed pending the resolution of the current proceedings that are considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs.

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

**Petition for Agreement with Redefinition of Service Areas
Of Certain Rural ILECs in the State of Michigan
DA 04-3506**

Type OPASTCO Reply Comments

Date December 1, 2004

Subject(s) The Commission's Public Notice seeking comment on the Dobson Cellular Systems, Inc. (Dobson) petition requesting FCC concurrence with the Michigan Public Service Commission's proposal to redefine the service areas of eight rural telephone companies.

OPASTCO The Commission should stay consideration of Dobson's petition until after the Commission completes the proceedings that are considering changes to the rules relating to rural high-cost support and the process for designating ETCs. However, if the Commission deems it necessary to address Dobson's petition prior to the resolution of these related proceedings, then it should reject the Michigan PSC's proposal to fragment the eight rural ILEC study areas, since the petition fails to provide a compelling rationale for such an action.

**Telephone Number Portability
CC Docket No. 95-116**

Type OPASTCO Comments

Date November 17, 2004

Subject(s) The Commission's Second Further Notice of Proposed Rulemaking related to wireline-to-wireless local number portability (LNP) and the existing porting interval.

OPASTCO There is no pressing need to reduce the four-day intermodal porting interval. However, should the Commission deem it necessary to act in this regard, then it should refrain from shortening the porting interval for rural wireline carriers due to the undue burdens that such a requirement would have on them. An appropriately crafted exemption would be in the best interests of rural consumers, and would comply with the Commission's responsibilities under the Regulatory Flexibility Act.

**Communications Assistance for Law Enforcement Act
And Broadband Access and Services
ET Docket No. 04-295
RM-10865**

Type OPASTCO Comments

Date November 8, 2004

Subject(s) The Commission's Notice of Proposed Rulemaking concerning the scope of the Communications Assistance for Law Enforcement Act's (CALEA) and other implementation and enforcement issues.

OPASTCO The Commission should provide small ILECs with an extended period of time to file alternative relief requests, and provide them with a blanket transition period, to achieve CALEA compliance with respect to packet-mode services. Such action would avoid imposing undue burdens and costs on small carriers, while reducing regulatory uncertainty that can hinder the continued deployment of broadband services to rural consumers.

**In the Matter of National Exchange Carrier Association, Inc.
2005 Modification of Average Schedule Universal Service Formulas
CC Docket No. 96-45
DA 04-3191**

Type OPASTCO Comments

Date November 1, 2004

Subject(s) The National Exchange Carrier Association's (NECA) proposed modifications to the average schedule universal service formulas for 2005.

OPASTCO NECA's proposed Local Switching Support formula and Universal Service Fund expense adjustment formula both satisfy Parts 36, 54, and 69 of the Commission's rules. Therefore, the formulas should be promptly approved so that small average schedule companies can receive reasonably accurate support payments.

**Federal-State Joint Board on
Universal Service**

**Federal-State Joint Board on Universal Service Seeks Comment
On Certain of the Commission's Rules Relating to
High-Cost Universal Service Support
CC Docket No. 96-45**

Type OPASTCO Comments

Date October 15, 2004

Subject(s) The Joint Board's Public Notice seeking comment on issues related to the high-cost universal service support mechanisms for rural carriers and the appropriate rural mechanism to succeed the five-year plan adopted in the Rural Task Force Order.

OPASTCO The Joint Board should recommend that the universal service support mechanism for rural telephone companies not be altered. The current mechanism – based on study area average embedded costs – is rational, accountable to the public, and achieves the universal service objectives of the 1996 Act. It provides the appropriate incentives for ILECs to invest in their networks so that rural consumers have access to high-quality services that are reasonably comparable to those available in urban areas and at reasonably comparable rates.

In contrast, the current basis of support for competitive ETCs (CETCs) is in serious need of reform. Providing CETCs with the ILEC's identical per-line support has enabled these carriers to receive support that exceeds their costs, thereby placing unnecessary strain on the High-Cost Program. As such, the Joint Board should recommend that the identical support rule be immediately eliminated and that CETCs in rural service areas be transitioned to a system of support based on their own embedded costs. By basing support for CETCs on their own costs, it would establish the same rationality and accountability in the support mechanism for these carriers that already exists in the mechanism for rural ILECs.

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

**NPCR, Inc. d/b/a Nextel Partners
Petitions for Eligible Telecommunications Carrier Designation
In the States of Alabama, Florida, Georgia, New York,
Pennsylvania, Tennessee, and Virginia
DA 04-2667**

Type OPASTCO Supporting Comments

Date October 12, 2004

Subject(s) The Application for Review filed by the Rural Local Exchange Carriers (RLECs) regarding the designation of NPCR, Inc. d/b/a Nextel Partners (Nextel) as an eligible telecommunications carrier (ETC) in various states.

OPASTCO The RLECs are correct in urging that all seven of the Nextel ETC designations recently approved by the Wireline Competition Bureau be reversed by the Commission. Additionally, the Bureau should be directed to defer consideration of the Nextel ETC Petitions, as well as other pending petitions for ETC designation in rural service areas, until after the Commission completes the proceedings that are considering changes to the rules relating to rural high-cost support and the process for designating ETCs.

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

Type OPASTCO, RICA, and RTG Joint Reply Comments

Date September 20, 2004

Subject(s) The Commission's Public Notice seeking comment on the Recommended Decision of the Universal Service Joint Board regarding rules related to high-cost support in competitive study areas and the process for designating competitive eligible telecommunications carriers (CETCs).

OPASTCO The overwhelming majority of commenters oppose limiting support to primary lines. For rural carriers, a primary line limitation would not provide sufficient support to achieve the universal service objectives of the Act. A cap on per-line support would also be antithetical to the Act's universal service principles and should not be adopted.

RICA

RTG

Numerous commenters agree that the FCC should address the fact that that funding CETCs based on the ILEC's costs may not be "economically rational." The Associations' interim universal service plan would squarely address this issue. The plan would begin to recognize that equal per-line support for carriers with significantly different costs, incentives and responsibilities is needlessly inflating the size of the fund.

The Associations' plan also provides standardized minimum guidelines to be used by regulators when reviewing ETC applications in rural service areas to control the number of CETCs that are designated. The majority of commenters support the adoption of such guidelines. In particular, it is imperative that regulators consider the long-term impact that ETC designations in high-cost areas will have on the fund. In addition, the FCC should maintain its current service area redefinition rules, consistent with the Joint Board's recommendation.

**Annual Assessment of the Status of Competition
In the Market for the Delivery of Video Programming
MB Docket No. 04-227**

Type OPASTCO Reply Comments

Date August 25, 2004

Subject(s) The Commission's Public Notice seeking comment on the state of competition in the market for the delivery of video programming.

OPASTCO The entry of rural telephone companies into the video market leads to more consumer choice, and when bundled with other services, enhances the deployment of broadband. However, restrictive practices such as forced carriage of unwanted channels, forced inclusion of channels in certain tiers, mandatory nondisclosure provisions, and unequal treatment by content providers, all serve as barriers to rural telephone companies' efforts to provide video services to their communities.

The provision of video services by rural telephone companies is increasingly linked to broadband deployment. Specifically, the provision of video services, when bundled with advanced services such as broadband, results in higher penetration rates, thereby encouraging further investment in the infrastructure necessary to deploy advanced services to more consumers.

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

**Petition to Redefine Certain Rural Telephone Company
Service Areas in the State of Wisconsin
DA 04-2191**

Type OPASTCO Reply Comments

Date August 18, 2004

Subject(s) The Commission's Public Notice seeking comment on the American Cellular Corporation's (ACC) petition requesting FCC concurrence with the Wisconsin Public Service Commission's proposal to redefine the service areas of twenty rural telephone companies.

OPASTCO The Commission should stay consideration of ACC's petition pending the resolution of the current proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating eligible telecommunications carriers (ETCs). Should the Commission deem it necessary to address the petition prior to the resolution of this related proceeding, OPASTCO believes that it should reject the Wisconsin PSC's proposal to fragment the twenty rural telephone company study areas, because the petition fails to provide a compelling rationale for such an action.

**A La Carte and Themed Tier Programming and Pricing
Options for Programming Distribution on Cable Television and
Direct Broadcast Satellite Systems
MB Docket No. 04-207**

Type OPASTCO Reply Comments

Date August 13, 2004

Subject(s) The Commission's Public Notice seeking comment on the merits of implementing "a la carte" and themed tier cable television subscription options for subscribers.

OPASTCO The offering of programming on an "a la carte" basis should not be mandated. Rather, carriers should have the option to make "a la carte" programming available, as well as various flexible tiers, as warranted by local market conditions. The entry of rural telephone companies into the video market leads to more consumer choice, and when bundled with other services, enhances the deployment of broadband. However, restrictive practices such as forced carriage

of unwanted channels, forced inclusion of channels in certain tiers, mandatory nondisclosure provisions, and unequal treatment by content providers all serve as barriers to rural telephone companies' efforts to provide video services to their communities.

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

Type OPASTCO, RICA, and RTG Joint Comments

Date August 6, 2004

Subject(s) The Commission's Public Notice seeking comment on the Recommended Decision of the Universal Service Joint Board regarding rules related to high-cost support in competitive study areas and the process for designating competitive eligible telecommunications carriers (CETCs).

OPASTCO Recognizing the need to control the growth of the USF, but without the
RICA detrimental impacts of a primary line limitation, the Associations propose
RTG movement toward a cost-based system for determining support for wireless CETCs that utilizes a tiered series of safe harbor ratios for determining their per-line support. The interim plan also provides minimum standardized criteria for regulators to apply to CETC applicants in rural service areas. The plan would provide sufficient support to both wireless and wireline ETCs, and would enable the FCC to better control the future growth of the USF while it considers more long-term reforms for all ETCs serving rural service areas.

The Associations' interim plan makes it unnecessary to impose a primary line limitation on support. Primary line-based support does not relate to what it actually costs a rural carrier to deploy network infrastructure. Thus, a primary line scheme would penalize rural consumers, preventing them from receiving high-quality, affordable wireline and wireless services.

In addition, the Associations' plan moves toward a cost-based system for determining support for CETCs. There is no basis for continuing the FCC's identical support rule, which provides the same per-line universal service support to CETCs as it does to ILECs.

**Petition for Rulemaking or, Alternatively a Waiver
Of the Closed Bidding Rules for C Block Licenses in the
Broadband Personal Communications Services Auction
RM No. 11019**

Type OPASTCO and RTG Comments

Date July 30, 2004

Subject(s) The Commission's Public Notice seeking comment on the Cellular Telecommunications & Internet Association's (CTIA) petition seeking a rulemaking proceeding to remove the entrepreneur eligibility restrictions for all C Block PCS licenses in its upcoming auction.

OPASTCO RTG The Commission should deny the CTIA petition requesting that the FCC initiate a rulemaking proceeding to remove the entrepreneur eligibility restrictions for all C Block licenses in its upcoming auction No. 58. By preserving the designated entity (DE) designations for certain available spectrum blocks in auction No. 58, the Commission can ensure that this auction will provide rural carriers with a meaningful opportunity to acquire additional spectrum. Moreover, the Commission should continue to enforce its previously established DE rules and policies for all future PCS spectrum auctions.

**IP-Enabled Services
WC Docket No. 04-36**

Type OPASTCO Reply Comments

Date July 14, 2004

Subject(s) The Commission's Notice of Proposed Rulemaking (NPRM) seeking comment on Internet Protocol (IP)-enabled services.

OPASTCO Numerous commenters agree that IP-enabled services that utilize an ILEC's network should provide equitable compensation through duly approved access charges. This requirement should remain in place until the current intercarrier compensation regime is reformed in a manner that accounts for the unique circumstances of rural ILECs. Commenters correctly note that IP-enabled service providers should not be permitted to shift the costs they impose on rural local networks onto rural ILECs and their customers. Additionally, the record in this proceeding demonstrates that the Commission should expand the base of universal service fund contributors to include all facilities-based broadband Internet access providers. Including all such providers as contributors is becoming increasingly critical to maintaining the fund's sufficiency and stability.

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

**Parties Are Invited to Comment on Petitions
For Eligible Telecommunications Carrier Designation
DA 04-1445**

Type OPASTCO Reply Comments

Date July 6, 2004

Subject(s) The Commission's Public Notice seeking comment on various petitions for designation as eligible telecommunications carriers (ETC).

OPASTCO All six of the applications for ETC designation identified in this FCC Public Notice should be stayed pending the resolution of the current proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs.

**Local Telephone Competition and
Broadband Reporting
WC Docket No. 04-141**

**Local Competition and Broadband Reporting
CC Docket No. 99-301**

Type OPASTCO Comments

Date June 28, 2004

Subject(s) The Commission's Notice of Proposed Rulemaking (NPRM) seeking comment on whether to revise its rules related to local telephone competition and broadband reporting.

OPASTCO There is no need to increase the granularity of the data collected or to lower the current reporting threshold. Sufficient data is already available from other sources and increasing numbers of rural carriers will be required to file Form 477 under the existing reporting threshold as broadband take rates continue to grow. Moreover, the costs and burdens that the proposed reporting requirements would impose on rural carriers and their customers would outweigh any potential benefits that the information may provide and may actually make it more difficult for these carriers to roll out their broadband service. In addition, it is essential that the Commission keep the data reported by rural ILECs confidential for the long-term.

**Presubscribed Interexchange Carrier Charges
CC Docket No. 02-53**

Type OPASTCO, NECA, and NTCA Joint Reply Comments

Date June 25, 2004

Subject(s) The Commission's Further Notice of Proposed Rulemaking (FNPRM), on the safe harbor for presubscribed interexchange carrier-change (PIC) charges.

OPASTCO Commenters have demonstrated that that rural LECs process few PIC change requests and that no technological, business or economic developments have emerged since adoption of the safe harbor, or are likely to emerge, that would lead rural LECs to convert to automatic processing methods. Additionally, commenters note that the manual processing of PIC changes as well as inflation and increased labor costs justify the current \$5.00 PIC change charge safe harbor. Because the record supports the current safe harbor rules the Commission should maintain the \$5.00 safe harbor, regardless of whether PIC changes are made manually or mechanically.

**Rules and Regulations Implementing Minimum
Customer Account Record Exchange Obligations on
All Local and Interexchange Carriers
CG Docket No. 02-386**

Type OPASTCO, NECA, and NTCA Joint Reply Comments

Date June 18, 2004

Subject(s) The Commission's Notice of Proposed Rulemaking (NPRM), regarding the rules and regulations implementing minimum Customer Account Record Exchange (CARE) obligations on all local and interexchange carriers (IXCs).

OPASTCO The Commission seeks comment on whether it should impose mandatory
NECA minimum CARE obligations on all LECs and IXCs. It is important for the
NTCA Commission to remember that the rural LEC marketplace is extremely diverse as well as significantly different from the regional Bell marketplace today. Therefore, the FCC must be careful to ensure that the outcome of this proceeding does not impose additional unnecessary regulatory burdens on small rural LECs. Thus, the Commission must carefully consider the status of industry solutions before adopting rules that may ultimately prove unworkable and/or overly burdensome and costly, particularly as applied to small rural telephone companies.

**Presubscribed Interexchange Carrier Charges
CC Docket No. 02-53**

Type OPASTCO, NECA, and NTCA Joint Comments

Date June 15, 2004

Subject(s) The Commission's Further Notice of Proposed Rulemaking (FNPRM) on the safe harbor for presubscribed interexchange carrier-change (PIC) charges.

OPASTCO As was the case two years ago, when the FCC last considered this issue, most
NECA rural LECs continue process the vast majority of PIC-changes on a manual basis
NTCA and, in all likelihood will continue to do so for the foreseeable future. As a result, the costs to rural LECs of providing PIC-change service today are not significantly different than the costs that initially formed the basis for the \$5 safe harbor, due to the absence of significant automation. Therefore, no change is warranted, and the Commission should retain the \$5 safe harbor for PIC-changes for rural LECs.

**IP-Enabled Services
WC Docket No. 04-36**

Type OPASTCO Comments

Date May 28, 2004

Subject(s) The Commission's Notice of Proposed Rulemaking (NPRM) seeking comment on Internet Protocol (IP)-enabled services.

OPASTCO IP-enabled services that utilize an ILEC's network should provide equitable compensation through duly approved access charges. This requirement should remain in place until the current intercarrier compensation regime is reformed in a manner that accounts for the unique circumstances of rural ILECs. IP-enabled service providers should not be permitted to shift the costs they impose on rural local networks onto rural ILECs and their customers. If this were to occur, the very networks that carry IP-enabled services to rural consumers would be compromised.

IP-enabled services that are functionally equivalent to traditional telephony should also be subject to similar service obligations such as E911 and disability access standards. It is not competitively neutral if one set of carriers are held to public safety and disability access standards, but other service providers offering functionally equivalent services are not. Additionally, rural ILECs need to retain the option to include DSL-based services in revenue pools, regardless of how these services are statutorily classified. The Commission should expand the base

of universal service fund contributors to include all facilities-based broadband Internet access providers. And, if the Commission asserts federal jurisdiction over IP-enabled services, it must ensure that the process is revenue neutral for all ILECs in all states, without prejudice to a state's rate rebalancing efforts.

**Inquiry Concerning the Development of Advanced Telecommunications
Capability to All Americans in a Reasonable and Timely Fashion,
and Possible Steps to Accelerate Such Development Pursuant
to Section 706 of the Telecommunications Act of 1996
GN Docket No. 04-54**

Type OPASTCO Comments

Date May 10, 2004

Subject(s) The Commission's Notice of Inquiry (NOI) seeking comment on whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.

OPASTCO Small, rural ILECs continue to deploy advanced services in high-cost and difficult to serve rural areas. In doing so, they have overcome unique challenges presented by limited consumer demand, technological limitations, and regulatory impediments. Although the Commission can not control the first two factors, it can take specific actions that will remove barriers to investments. These actions include: rejecting the Joint Board's recommendation to restrict USF support to primary lines, retaining the option for ILECs to include DSL in the NECA pools, permitting accelerated depreciation for broadband infrastructure investments, and helping ensure affordable access to video content.

**Multi-Association Group (MAG) Plan for
Regulation of Interstate Services of Non-Price
Cap Incumbent Local Exchange Carriers and
Interexchange Carriers
CC Docket No. 00-256**

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

Type OPASTCO Reply Comments

Date May 10, 2004

Subject(s) The Commission's Second Further Notice of Proposed Rulemaking (SFNPRM) in the Multi-Association Group (MAG) Plan proceeding.

OPASTCO Commenters in this proceeding overwhelmingly support the Commission's tentative conclusion to make optional for all rate-of-return (ROR) carriers any alternative regulation plans it may adopt and to permit carriers to elect participation by study area. The record also demonstrates that the Commission should allow ROR carriers to elect alternative regulation and remain in the National Exchange Carrier Association (NECA) pools.

**Multi-Association Group (MAG) Plan for
Regulation of Interstate Services of Non-Price
Cap Incumbent Local Exchange Carriers and
Interexchange Carriers
CC Docket No. 00-256**

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

Type OPASTCO Comments

Date April 23, 2004

Subject(s) The Commission's Second Further Notice of Proposed Rulemaking (SFNPRM) in the Multi-Association Group (MAG) Plan proceeding.

OPASTCO The Commission is correct in its tentative conclusion to make optional for all rate-of-return (ROR) carriers any alternative regulation plans it may adopt and to permit carriers to elect participation in such plans by study area. Such optionality is necessary to accommodate the diversity of ROR carrier operating conditions while also preserving sound incentives for investment and maintaining quality of service in rural areas. The Commission should also allow ROR carriers to elect alternative regulation and remain in the National Exchange Carrier Association (NECA) pools. Allowing carriers wishing to choose alternative regulation to remain in the pools would help keep the pools strong for all carriers. It would also result in more carriers electing alternative regulation that may not have considered it otherwise.

**Petition for Declaratory Ruling that
Inflexion Communications ExtendIP VOIP
Service is Exempt From Access Charges
WC Docket No. 04-52**

Type OPASTCO, ITTA, NECA, and USTA Joint Comments

Date April 7, 2004

Subject(s) Inflexion Communications Petition for Declaratory Ruling that its ExtendIP VOIP service is exempt from access charges.

OPASTCO The Commission should reject Inflexion’s assertion that its Voice over Internet
ITTA Protocol (VoIP) service is exempt from access charges. The issues raised in the
NECA petition are already being considered in the Commission’s recently released IP-
USTA Enabled Services Notice of Proposed Rulemaking, and as such it would be premature to make any decision at this time. Moreover, Inflexion has presented no evidence that its service uses the local network any differently than other telecommunications services, and the FCC should confirm that any call touching the public switched telephone network (PSTN) must pay access charges.

ASAP Paging, Inc.
Petition for Preemption of Public Utility
Commission of Texas Concerning Retail
Rating of Local Calls to CMRS Carriers
WC Docket No. 04-6

Type OPASTCO and NECA Joint Comments

Date March 23, 2004

Subject(s) ASAP Paging, Inc. Petition for Preemption of an Order of the Texas Public Utility Commission (Texas PUC) concerning retail rating of local calls to CMRS carriers.

OPASTCO The Commission should reject ASAP Paging’s petition for preemption. The
NECA Texas PUC allowed CenturyTel, Inc. to rate calls placed to ASAP paging customers based on the physical location of ASAP’s switch (located outside of the ILEC’s rate center), rather than on ASAP’s three-digit “virtual NXX,” which makes such calls appear local. Since ASAP’s petition involves questions falling within the interstate jurisdiction, the Commission should bear in mind that ILECs like CenturyTel incur costs for transporting traffic and are entitled to receive compensation for providing such services. Therefore, the Commission should uphold the Texas decision, since it allows ILECs to reasonably recover the legitimate costs associated with routing calls to the facilities of CMRS carriers located outside of an ILEC’s local service area.

Level 3 Petition for Forbearance from
Assessment of Access Charges on
Voice Embedded IP Communications
WC Docket No. 03-266

Type OPASTCO, ITTA, NECA, and USTA Joint Comments

Date March 1, 2004

Subject(s) Level 3 Communications Petition for Forbearance from Enforcement of Section 251(g) of the Communications Act.

OPASTCO Level 3's petition asks for an exemption from paying access charges, but does not
ITTA demonstrate how the use of Voice-over Internet Protocol (VoIP) technology
NECA reduces LECs' cost of providing access services. In response to this and other
USTA similar petitions, the Commission should declare that all voice services that utilize the Public Switched Telephone Network, regardless of the technology they use to transmit voice signals, are subject to duly approved access charges that may be assessed by LECs for the use of their networks. In addition, Level 3 does not meet the three criteria for forbearance because its petition: favors VoIP providers at the expense of facilities-based LECs and their customers; nullifies the FCC's rules for VoIP providers and forces LECs and their customers to absorb the significant costs of providing access; and seeks discriminatory treatment of LECs, which risks higher costs and/or degradation of service for consumers.

**Telephone Number Portability
CC Docket No. 95-116**

**CTIA Petitions for Declaratory Ruling on
Wireline-Wireless Porting Issues
FCC 03-284**

Type OPASTCO Reply Comments

Date February 4, 2004

Subject(s) The Commission's November 7, 2003 Further Notice of Proposed Rulemaking related to wireline-to-wireless local number portability (LNP).

OPASTCO Commenters in this proceeding have correctly indicated that the Commission failed to conduct proper Regulatory Flexibility Analyses, and should therefore stay its intermodal LNP requirements until it has done so. Further, OPASTCO concurs with parties that noted the Commission has failed to indicate how carriers that individually serve fewer than two percent of the nation's access lines (2 Percent Carriers) are expected to overcome obstacles to implementing intermodal LNP, involving the rating and routing of calls in the absence of interconnection agreements. Finally, the Commission must refrain from shortening the porting interval for 2 Percent Carriers due to the undue burdens that such a requirement would impose on them.

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

**NPCR, Inc. d/b/a Nextel Partners
Petition for Designation as an
Eligible Telecommunications Carrier
In the State of Florida
DA 03-4113**

Type OPASTCO Comments

Date February 2, 2004

Subject(s) The Commission's Public Notice seeking comment on the NPCR, Inc. d/b/a Nextel Partners (Nextel) petition for designation as an eligible telecommunications carrier (ETC) in Florida.

OPASTCO Nextel's application for ETC designation in Florida should be stayed pending the resolution of the current proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs. Alternatively, Nextel's application should be denied unless and until a more complete public interest showing can be made that takes into account both the public benefits and the public costs of granting ETC status to Nextel.

**AT&T Corp. Petition Pursuant to 47 U.S.C.
Section 160(c) of the Communications Act
For Forbearance from Enforcement of
Section 204(a)(3) of the Communications Act,
As Amended
WC Docket No. 03-256**

Type Joint Comments

Date January 30, 2004

Subject(s) AT&T Corp.'s Petition for Forbearance from Enforcement of Section 204(a)(3) of the Communications Act.

OPASTCO AT&T's Petition, which asks the FCC to forbear from enforcing Section 204 of the 1996 Act (which permits carriers to file tariffs on a streamlined basis), must be denied. This is because, despite the petition's title, AT&T is asking the Commission to increase, rather than forbear from, regulation. This is neither permitted under the forbearance language of Section 10(a) of the Act, nor

ERTA
ITTA
NECA
NTCA

**USTA
Western
Alliance** consistent with Congress' intent in granting forbearance authority to the Commission. Furthermore, even if Section 10(a) did contemplate allowing the Commission to re-regulate rather than foster telecommunications deregulation, the Commission must deny AT&T's Petition because AT&T lacks standing under Section 10(c) to request regulatory forbearance on behalf of carriers other than itself.

**National Exchange Carrier Association, Inc.
Proposed Modifications to the 2003-2004
Interstate Average Schedule Formulas
WC Docket No. 03-9**

Type OPASTCO Comments

Date January 30, 2004

Subject(s) NECA's proposed modifications to the average schedule formulas for the period July 1, 2004, through June 30, 2005.

OPASTCO The Pricing Policy Division should promptly approve NECA's proposed modifications for July 1, 2004, and should also consider the need for transitional support for any company that demonstrates a hardship from the settlement changes. OPASTCO believes that NECA's proposed average schedule formulas would simulate the disbursements that would be received by a representative cost company.

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

**ALLTEL Communications, Inc.
Petition for Consent to Redefine the Service Areas of
Rural Telephone Companies in the
State of Michigan
DA 03-4112**

Type OPASTCO Reply Comments

Date January 29, 2004

Subject(s) The Commission's Public Notice seeking comment on the ALLTEL Communications, Inc. (ALLTEL) petition requesting FCC concurrence with the Michigan Public Service Commission's proposal to redefine the service areas of seven rural telephone companies.

OPASTCO The Commission should stay consideration of ALLTEL’s petition pending the resolution of the current proceeding that is considering changes to the Commission’s rules relating to high-cost support in competitive study areas as well as the process for designating eligible telecommunications carriers (ETCs). Should the Commission deem it necessary to address the petition prior to the resolution of this related proceeding, OPASTCO believes that it should reject the Michigan PSC’s proposal to fragment the seven rural telephone company study areas, because the petition fails to provide a compelling rationale for such an action.

**Facilitating the Provision of Spectrum-Based
Services to Rural Areas and Promoting
Opportunities for Rural Telephone Companies
To Provide Spectrum-Based Services
WT Docket No. 02-381**

Type OPASTCO and RTG Joint Reply Comments

Date January 26, 2004

Subject(s) The Commission’s Notice of Proposed Rulemaking (NPRM) regarding spectrum-based services in rural areas.

OPASTCO Comments filed in this proceeding indicate a definitive rural carrier consensus for
RTG stricter rural buildout requirements, the adoption of a “keep what you use” approach to licensing in areas larger than basic trading areas (BTAs), and the future allocation of additional wireless licenses in smaller geographic service areas. Additionally, the record in this proceeding clearly refutes the large carrier misconception that the Commission’s existing rules and policies are adequate to ensure that spectrum-based services will be deployed in rural areas. Instead, by implementing the policies considered in the NPRM and advocated by OPASTCO and RTG, the Commission can help to ensure that meaningful wireless coverage exists in all regions of America, not just those urban areas and highways served by large carriers.

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

**ALLTEL Communications, Inc.
Petition for Designation as an
Eligible Telecommunications Carrier
And Rural Service Area Redefinition
In the State of Georgia
DA 03-3825**

Type OPASTCO Comments

Date January 12, 2004

Subject(s) The Commission's Public Notice seeking comment on the ALLTEL Communications, Inc. (ALLTEL) petition for designation as an eligible telecommunications carrier (ETC) and rural service area redefinition in Georgia.

OPASTCO ALLTEL's application for ETC designation and rural service area redefinition in Georgia should be stayed pending the resolution of the current proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs. Alternatively, ALLTEL's application should be denied unless and until a more complete public interest showing can be made that takes into account both the public benefits and the public costs of granting ETC status to ALLTEL.

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

**ALLTEL Communications, Inc.
Petition for Designation as an
Eligible Telecommunications Carrier
And Rural Service Area Redefinition
In the State of North Carolina
DA 03-3825**

Type OPASTCO Comments

Date January 12, 2004

Subject(s) The Commission's Public Notice seeking comment on the ALLTEL Communications, Inc. (ALLTEL) petition for designation as an eligible

telecommunications carrier (ETC) and rural service area redefinition in North Carolina.

OPASTCO ALLTEL's application for ETC designation and rural service area redefinition in North Carolina should be stayed pending the resolution of the current proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs. Alternatively, ALLTEL's application should be denied unless and until a more complete public interest showing can be made that takes into account both the public benefits and the public costs of granting ETC status to ALLTEL.

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

**NPCR, Inc. d/b/a Nextel Partners
Petition for Designation as an
Eligible Telecommunications Carrier
In the State of Tennessee
DA 03-3105**

Type OPASTCO Comments

Date January 9, 2004

Subject(s) The Commission's Public Notice seeking comment on the NPCR, Inc. d/b/a Nextel Partners (Nextel) petition for designation as an eligible telecommunications carrier (ETC) in Tennessee.

OPASTCO Nextel's application for ETC designation in Tennessee should be stayed pending the resolution of the current proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating ETCs. Alternatively, Nextel's application should be denied unless and until a more complete public interest showing can be made that takes into account both the public benefits and the public costs of granting ETC status to Nextel.

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

**ALLTEL Communications, Inc.
Petition for Consent to Redefine the Service Areas of
Rural Telephone Companies in the
State of Wisconsin
DA 03-3876**

Type OPASTCO Reply Comments

Date January 5, 2004

Subject(s) The Commission's Public Notice seeking comment on the ALLTEL Communications, Inc. (ALLTEL) petition requesting FCC concurrence with the Wisconsin Public Service Commission's proposal to redefine the service areas of fourteen rural telephone companies.

OPASTCO The Commission should stay consideration of ALLTEL's petition pending the resolution of the current proceeding that is considering changes to the Commission's rules relating to high-cost support in competitive study areas as well as the process for designating eligible telecommunications carriers (ETCs). Should the Commission deem it necessary to address the petition prior to the resolution of this related proceeding, OPASTCO believes that it should reject the Wisconsin PSC's proposal to fragment the seven rural telephone company study areas, because the petition fails to provide a compelling rationale for such an action.

EX-PARTE MEETINGS

- Date** December 16, 2004
- Subject** Representatives from OPASTCO, the Rural Independent Competitive Alliance (RICA), and the Rural Telecommunications Group (RTG) met with staff from the FCC's Wireline Competition Bureau to discuss the Associations' interim plan for providing wireless competitive eligible telecommunications carriers (CETCs) in rural service areas with a percentage of the rural ILEC's per-line support.
- Attendance** Narda Jones (FCC)
Tom Buckley (FCC)
Gina Spade (FCC)
Gary Seigel (FCC)
James Bachtell (FCC)
Erica Myers (FCC)
Mark Seifert (FCC)
Ron Strecker (OPASTCO)
Stuart Polikoff (OPASTCO)
Jeffrey Smith (OPASTCO)
Rick Vergin (RICA)
Dave Cosson (RICA)
Ken Johnson (RTG)
- Date** November 1, 2004
- Subject** Representatives from OPASTCO, Bennet & Bennet, and Irwin, Campbell & Tannenwald met with staff from the FCC's Media Bureau and the Wireline Competition bureau to discuss the link between video services and the deployment of broadband services in rural areas.
- Attendance** Peggy Greene (FCC)
Wayne McKee (FCC)
John Keifer (FCC)
Alison Greenwald (FCC)
Mike Lance (FCC)
Priscilla Lee (FCC)
John Norton (FCC)
William Johnson (FCC)
Cathy Carpino (FCC)
Regina Brown (FCC)
Narda Jones (FCC)
Allen Hoopes (OPASTCO)
Steve Pastorkovich (OPASTCO)

Howard Shapiro (Bennet & Bennet)
David Irwin (Irwin, Campbell & Tannenwald)

Date November 2, 2004

Subject Representatives from OPASTCO, the Independent Telephone and Telecommunications Alliance (ITTA), and the Western Telecommunications Alliance (WTA) met with staff for Commissioner Jonathan Adelstein to discuss Vonage Corp.'s petition related to the jurisdictional classification of Voice over Internet Protocol (VoIP) services. The Associations believe that a premature, piecemeal decision on jurisdiction issues could have serious consequences for a variety of key policy issues affecting rural carriers, such as universal service and intercarrier compensation.

Attendance Scott Bergmann (FCC)
Stuart Polikoff (OPASTCO)
David Zesiger (ITTA)
Jay Driscoll (WTA)

Date November 1, 2004

Subject Representatives from OPASTCO, the Independent Telephone and Telecommunications Alliance (ITTA), the National Telecommunications Cooperative Association (NTCA), and the Western Telecommunications Alliance (WTA) met with Commissioner Michael Copps and staff to discuss Vonage Corp.'s petition related to the jurisdictional classification of Voice over Internet Protocol (VoIP) services. The Associations believe that a premature, piecemeal decision on jurisdiction issues could have serious consequences for a variety of key policy issues affecting rural carriers, such as universal service and intercarrier compensation.

Attendance Commissioner Michael Copps (FCC)
Jessica Rosenworcel (FCC)
John Rose (OPASTCO)
Stuart Polikoff (OPASTCO)
Randy Tyree (OPASTCO)
David Zesiger (ITTA)
Jill Canfield (NTCA)
Jay Driscoll (WTA)

Date November 1, 2004

Subject Representatives from OPASTCO, the Independent Telephone and Telecommunications Alliance (ITTA), the National Telecommunications Cooperative Association (NTCA), and the Western Telecommunications Alliance (WTA) met with Commissioner Kevin Martin to discuss Vonage Corp.'s petition related to the jurisdictional classification of Voice over Internet Protocol (VoIP) services. The Associations believe that a premature, piecemeal decision on jurisdiction issues could have serious consequences for a variety of key policy issues affecting rural carriers, such as universal service and intercarrier compensation.

Attendance Commissioner Kevin Martin (FCC)
John Rose (OPASTCO)
Stuart Polikoff (OPASTCO)
Randy Tyree (OPASTCO)
David Zesiger (ITTA)
Jill Canfield (NTCA)
Jay Driscoll (WTA)

Date September 24, 2004

Subject Representatives from OPASTCO, Public Service Telecommunications, and the National Telecommunications Cooperative Association (NTCA) met with staff from the office of Chairman Michael Powell to discuss their concerns regarding the proposed merger of AT&T Wireless / Cingular Wireless. Specifically, they urged that the FCC consider the potential negative impacts (such as the loss of roaming revenues) that the merger could have on small rural wireless carriers, and the customers they serve.

Attendance Bryan Tramont (FCC)
Don Bond (Public Service Telecommunications)
Steve Pastorkovich (OPASTCO)
Michael Kurtis (Bennet & Bennet)
Jessica Bridges (Bennet & Bennet)
Richard Schadelbauer (NTCA)

Date September 8, 2004

Subject Representatives from OPASTCO, Public Service Telecommunications, and the National Telecommunications Cooperative Association (NTCA) met with Commissioner Kathleen Abernathy and staff to discuss their concerns regarding the proposed merger of AT&T Wireless / Cingular Wireless. Specifically, they urged that the FCC consider the potential negative impacts (such as the loss of

roaming revenues) that the merger could have on small rural wireless carriers, and the customers they serve.

Attendance Commissioner Kathleen Abernathy (FCC)
Matt Brill (FCC)
Don Bond (Public Service Telecommunications)
Jeffrey Smith (OPASTCO)
Michael Kurtis (Bennet & Bennet)
Richard Schadelbauer (NTCA)

Date September 8, 2004

Subject Representatives from OPASTCO, Public Service Telecommunications, and the National Telecommunications Cooperative Association (NTCA) met with Commissioner Jonathan Adelstein and staff to discuss their concerns regarding the proposed merger of AT&T Wireless / Cingular Wireless. Specifically, they urged that the FCC consider the potential negative impacts (such as the loss of roaming revenues) that the merger could have on small rural wireless carriers, and the customers they serve.

Attendance Commissioner Jonathan Adelstein (FCC)
Barry Ohlson (FCC)
Scott Bergmann (FCC)
Don Bond (Public Service Telecommunications)
Jeffrey Smith (OPASTCO)
Michael Kurtis (Bennet & Bennet)
Richard Schadelbauer (NTCA)

Date September 8, 2004

Subject Representatives from OPASTCO, Public Service Telecommunications, and the National Telecommunications Cooperative Association (NTCA) met with Commissioner Michael Copps and staff to discuss their concerns regarding the proposed merger of AT&T Wireless / Cingular Wireless. Specifically, they urged that the FCC consider the potential negative impacts (such as the loss of roaming revenues) that such a merger could have on small rural wireless carriers, and the customers that they serve.

Attendance Commissioner Michael Copps (FCC)
Paul Margie (FCC)
Don Bond (Public Service Telecommunications)
Jeffrey Smith (OPASTCO)
Michael Kurtis (Bennet & Bennet)
Jill Canfield (NTCA)

Richard Schadelbauer (NTCA)

Date September 7, 2004

Subject Representatives from OPASTCO, Public Service Telecommunications, and the National Telecommunications Cooperative Association (NTCA) met with Commissioner Kevin Martin and staff to discuss their concerns regarding the proposed merger of AT&T Wireless / Cingular Wireless. Specifically, they urged that the FCC consider the potential negative impacts (such as the loss of roaming revenues) that such a merger could have on small rural wireless carriers, and the customers that they serve.

Attendance Commissioner Kevin Martin (FCC)
Sam Feder (FCC)
Don Bond (Public Service Telecommunications)
Jeffrey Smith (OPASTCO)
Michael Kurtis (Bennet & Bennet)
Jill Canfield (NTCA)

Date June 2, 2004

Subject Representatives from OPASTCO and NTCA met with FCC staff from various bureaus and offices to discuss issues associated with Voice Over IP, including the application of access charges, universal service contributions, and social obligations such as E911.

Attendance William Maher (FCC)
Jane Jackson (FCC)
Jeffrey Carlisle (FCC)
Cathy Carpino (FCC)
Russell Hanser (FCC)
Terri Natoli (FCC)
Victoria Schlesinger (FCC)
Steve Morris (FCC)
Tamara Preiss (FCC)
Robert Tanner (FCC)
Margaret Dailey (FCC)
Richard Lerner (FCC)
Jennifer McKee (FCC)
Christi Shewman (FCC)
Kyle Dixon (FCC)
Anna Gomez (FCC)
David Krech (FCC)
Matt Brill (FCC)

Marjorie Manne (FCC)
Jason Williams (FCC)
Robert Cannon (FCC)
Jeffrey Goldthorp (FCC)
Paul Nagle (FCC)
John Rose (OPASTCO)
Stuart Polikoff (OPASTCO)
Steve Pastorkovich (OPASTCO)
Marie Guillory (NTCA)
Dan Mitchell (NTCA)
Rick Schadelbauer (NTCA)

Date March 25, 2004

Subject Representatives from OPASTCO met with a representative from Commissioner Kathleen Abernathy's staff to discuss OPASTCO's views on the Joint Board's recommended decision concerning universal service portability and the Commission's plans for putting the recommendation out for comment.

Attendance Matt Brill (FCC)
John Duda (OPASTCO)
John Rose (OPASTCO)
Stuart Polikoff (OPASTCO)

Date February 5, 2004

Subject Representatives from OPASTCO, ALLTEL, ITTA, NECA, NTCA, Reed Smith LLP, and USTA met with Commissioner Jonathan Adelstein and staff to discuss issues associated with Voice Over IP and the importance of requiring access charges where an IP-based voice service continues to connect with the public switched telephone network.

Attendance Commissioner Jonathan Adelstein (FCC)
Lisa Zaina (FCC)
Stephen Pastorkovich (OPASTCO)
Jeffrey Smith (OPASTCO)
David Bartlett (ALLTEL)
David Zesiger (ITTA)
Ken Levy (NECA)
Rick Askoff (NECA)
Colin Sandy (NECA)
Marie Guillory (NTCA)
Judith Harris (Reed Smith LLP)
Michael McMenamin (USTA)

Date February 5, 2004

Subject Representatives from OPASTCO, ALLTEL, ITTA, NECA, NTCA, Reed Smith LLP, and USTA met with Commissioner Michael Copps and staff to discuss issues associated with Voice Over IP and the importance of requiring access charges where an IP-based voice service continues to connect with the public switched telephone network.

Attendance Commissioner Michael Copps (FCC)
Jessica Rosenworcel (FCC)
Stephen Pastorkovich (OPASTCO)
Jeffrey Smith (OPASTCO)
David Bartlett (ALLTEL)
David Zesiger (ITTA)
Ken Levy (NECA)
Rick Askoff (NECA)
Colin Sandy (NECA)
Marie Guillory (NTCA)
Judith Harris (Reed Smith LLP)
Michael McMenamin (USTA)

Date February 2, 2004

Subject Representatives from OPASTCO met with Commissioner Jonathan Adelstein and staff to discuss OPASTCO's views on the Joint Board's proceeding concerning the process for designating eligible telecommunications carriers (ETCs), with a specific focus on proposals that would establish presumptive benchmarks for how many ETCs should be designated, based upon the amount of monthly per-line universal service support received in a given study area.

Attendance Commissioner Jonathan Adelstein (FCC)
Lisa Zaina (FCC)
Archie Macias (OPASTCO)
John Rose (OPASTCO)

Date January 23, 2004

Subject Representatives from OPASTCO, ALLTEL, NECA, NTCA, Reed Smith LLP, and USTA met with Commissioner Kevin Martin and staff to discuss issues associated with Voice Over IP and the importance of requiring access charges where an IP-based voice service continues to connect with the public switched telephone network.

Attendance Commissioner Kevin Martin (FCC)

Daniel Gonzalez (FCC)
Jason Williams (FCC)
John Rose (OPASTCO)
David Bartlett (ALLTEL)
Ken Levy (NECA)
Colin Sandy (NECA)
Dan Mitchell (NTCA)
Judith Harris (Reed Smith LLP)
Michael McMenamin (USTA)

OTHER FILINGS

- Type** Joint Motion for Leave to Intervene filed with the U.S. Court of Appeals for the District of Columbia Circuit
- Date** November 11, 2004
- Subject(s)** OPASTCO, NECA, ITTA, NTCA, and USTA filed a joint motion for leave to intervene with the D.C. Court of Appeals on behalf of Virgin islands Telephone Corp. (VITELCO) in its case against the Federal Communications Commission. The FCC order being challenged by VITELCO effects the Associations' members, since the case addresses the ability of ILECs to file tariffs that are considered to be "deemed lawful" under Section 204(a)(3) of the 1996 Act.
- Type** Letter to Federal Communications Commission Chairman Michael Powell
- Date** October 15, 2004
- Subject(s)** OPASTCO, ITTA, NTCA, and the Western Telecommunications Alliance sent a letter to FCC Chairman Michael Powell. The letter is in response to correspondence from members of Congress asking that the FCC expeditiously issue a declaratory ruling that finds that VoIP services are inherently interstate and subject to the FCC's exclusive jurisdiction. The associations believe that a premature decision on jurisdiction issues could have serious consequences for a variety of key policy issues affecting rural carriers, such as universal service and intercarrier compensation. The associations urged the FCC to wait to address the appropriate jurisdictional treatment of VoIP services in the proceeding on IP-Enabled Services, where a comprehensive and integrated solution can be reached that considers every facet of the issue.
- Type** Petition for Review with the U.S. Court of Appeals for the District of Columbia Circuit
- Date** August 9, 2004
- Subject(s)** OPASTCO, NTCA, USTA, and CenturyTel, Inc. filed a reply brief with the D.C. Court of Appeals asking it to vacate the FCC's wireline-to-wireless local number portability (LNP) Order. Its arguments notwithstanding, the FCC failed to comply with the Administrative Procedure Act (APA) before imposing the wireline-to-wireless LNP requirements. The APA requires that, prior to enacting any new regulatory requirements, government agencies such as the FCC must conduct a notice and comment cycle, which the FCC failed to do. Moreover, the

Commission failed to comply with the Regulatory Flexibility Act (RFA) before imposing the wireline-to-wireless portability rules.

Type Letter to Federal Communications Commission Chairman Michael Powell

Date August 9, 2004

Subject(s) OPASTCO, ITTA, NTCA, and the Western Telecommunications Alliance sent a letter to FCC Chairman Michael Powell. The letter concerns AT&T's petition for declaratory ruling regarding "enhanced" prepaid calling card services. In the letter, the four rural associations strongly urged the FCC to act swiftly to deny AT&T's petition and to require AT&T to make retroactive payment of the universal service contributions and access charges it has been avoiding. The associations believe that further inaction by the FCC will only threaten to undermine the mechanisms that keep rural rates affordable.

Type Written *Ex Parte* Presentation to the Federal Communications Commission

Date August 5, 2004

Subject(s) OPASTCO and NTCA filed a white paper with the FCC entitled "False Premises, False Conclusions: A Response to an Attack on Universal Service," authored by economist Dale Lehman, PhD. The white paper responds to a document submitted by Western Wireless in the Universal Service Portability Proceeding. Lehman's analysis of the Western Wireless paper includes the following findings: 1) the paper presented an erroneous picture of the growth of the USF by failing to represent the significant shift from implicit to explicit support and by providing a flawed analysis of explicit USF mechanisms, 2) the paper incorrectly assumed that corporate overhead expenses should vary little, after adjusting for firm size, which conflicts with logic and evidence, and 3) the paper failed to provide evidence of ILEC inefficiency and failed to provide evidence that incentive regulation such as price caps would perform any better. Consequently, Western Wireless' paper is fundamentally flawed, and ultimately supports arguments that escalating fund growth is a result of the fact that wireless competitive eligible telecommunications carriers are receiving support without demonstrating their actual costs.

Type Written Testimony Submitted to the Senate Committee on Commerce, Science, and Transportation on S. 2281, "*The VOIP Regulatory Freedom Act of 2004*"

Date June 16, 2004

Subject(s) Rural consumers will not be able to enjoy the benefits of VoIP, if the underlying networks operated by rural telephone companies are compromised due to a lack of

adequate cost recovery. Legislation placing an explicit ban on the application of access charges to VoIP services would impede the deployment of broadband and VoIP in rural areas. Rural telephone companies rely heavily on access charges to recover the costs of supplying other service providers with access to their facilities. Neither bill-and-keep nor reciprocal compensation reflect rural carriers' full costs of providing access to their local networks.

Without the cost recovery made possible by access charges, the ability of rural telephone companies to continue investing in the network upgrades necessary to provide broadband would be seriously compromised. Since broadband is generally necessary to carry VoIP services, a prohibition on access charges would have the ironic effect of preventing VoIP providers from making their services available to some consumers in rural areas.

The appropriate regulation of VoIP should be determined in the context of several comprehensive proceedings currently being conducted by the FCC, not in stand alone legislation on VoIP. Congress should continue to fulfill its critical oversight role, and ensure that the FCC adopts policies that serve the interests of all Americans, especially those living in rural areas.

Additionally, the base of universal service fund contributors should be expanded to include all facilities-based broadband Internet access providers. Also, IP-enabled services that are functionally equivalent to traditional telephony should be subject to similar service obligations, such as E911 and disability access standards. These obligations should be mandatory, not voluntary. Rural telephone companies must retain the option to include DSL in revenue pools, regardless of how DSL is statutorily classified. Lastly, if federal jurisdiction is asserted over VoIP, it is essential that the process is revenue neutral for all rural telephone companies in all states, without prejudice to a state's rate rebalancing efforts.

Type Petition for Review with the U.S. Court of Appeals for the District of Columbia Circuit

Date May 25, 2004

Subject(s) OPASTCO, NTCA, USTA, and CenturyTel, Inc. filed an initial brief with the D.C. Court of Appeals asking it to vacate the FCC's wireline-to-wireless local number portability (LNP) Order. The petitioners made three fundamental arguments:

The FCC failed to comply with the Administrative Procedure Act (APA) before imposing the wireline-to-wireless LNP requirements. The APA requires that, prior to enacting any new regulatory requirements, government agencies such as the FCC must conduct a notice and comment cycle.

The FCC also failed to comply with the Regulatory Flexibility Act (RFA) before imposing the wireline-to-wireless portability rules. The RFA requires that, prior to enacting any new regulatory requirements, government agencies such as the FCC must conduct a proceeding to consider the impact that the proposed rules would have on small businesses.

The rules for wireline-to-wireless LNP, as ultimately adopted by the FCC, are anti-competitive and discriminate against wireline carriers.

The Petitioners asked the Court to remand the LNP rules to the FCC, so that both a comprehensive notice and comment cycle, and the accompanying RFA process, can be conducted, in accordance with the law.

Type Written Testimony Submitted to the Senate Subcommittee on Agriculture, Rural Development and Related Agencies, Committee on Appropriations

Date March 22, 2004

Subject(s) OPASTCO submitted this testimony in order to seek the Subcommittee's support for FY 2005 loan levels for the telecommunications loans program and Rural Telephone Bank (RTB) program administered by the Rural Utilities Service (RUS) in the following amounts:

5% hardship loans:	\$145 million
Treasury Rate loans:	\$250 million
Guaranteed loans:	\$100 million
RTB loans:	\$175 million

In addition, OPASTCO requested the following action by the Subcommittee: 1) a prohibition on the transfer of unobligated RTB funds to the general fund of the Treasury and a requirement that interest be paid on these funds; and (2) funding of the distance learning, telemedicine, and broadband grant and loan programs at sufficient levels.

Type Written Testimony Submitted to the House of Representatives Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies, Committee on Appropriations

Date March 22, 2004

Subject(s) OPASTCO submitted this testimony in order to seek the Subcommittee's support for FY 2005 loan levels for the telecommunications loans program and Rural Telephone Bank (RTB) program administered by the Rural Utilities Service (RUS) in the following amounts:

5% hardship loans:	\$145 million
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Treasury Rate loans:	\$250 million
Guaranteed loans:	\$100 million
RTB loans:	\$175 million

In addition, OPASTCO requested the following action by the Subcommittee: 1) a prohibition on the transfer of unobligated RTB funds to the general fund of the Treasury and a requirement that interest be paid on these funds; and (2) funding of the distance learning, telemedicine, and broadband grant and loan programs at sufficient levels.

- Type** Reply to Respondents' Opposition to Petitioners' Emergency Petition for Expedited Review with the U.S. Court of Appeals for the District of Columbia Circuit
- Date** January 21, 2004
- Subject(s)** OPASTCO and NTCA urged the Court ignore the FCC's arguments and grant the proposed expedited court review of the FCC's wireline-to-wireless LNP requirements as they pertain to small, rural LECs. Nothing presented in the FCC's rebuttal invalidates the need for more urgent review of OPASTCO and NTCA's challenge to the potentially burdensome intermodal LNP rules.
- Type** Emergency Petition for Expedited Review with the U.S. Court of Appeals for the District of Columbia Circuit
- Date** January 14, 2004
- Subject(s)** OPASTCO and NTCA filed a Petition with the United States Court of Appeals for the District of Columbia asking it to review the FCC's Intermodal Portability Order on an expedited basis. It is likely that these new LNP rules will cause irreparable harm to rural LECs as they begin expending copious amounts of time and money developing infrastructure and procedures in order to come into compliance by the May 24, 2004, deadline.