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

Submission to the Commission's Voice Over IP Forum
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OPASTCO
21 Dupont Circle, NW
Suite 700
Washington, DC 20036
202-659-5990
http://www.opastco.org

INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) submits this statement for the record in conjunction with the Voice over Internet Protocol (VoIP) Forum held by the Federal Communications Commission (Commission, FCC) on December 1, 2003. OPASTCO is a national trade association representing over 550 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO member carriers are rural telephone companies as defined in the Telecommunications Act of 1996 (1996 Act).[1] In addition to serving as incumbent local exchange carriers (ILECs), OPASTCO members provide a wide range of other communications services, including dial-up Internet access, broadband, wireless, competitive local exchange, long distance and video.

THE REGULATORY TREATMENT OF VOIP SHOULD NOT BE DETRIMENTAL TO THE UNDERLYING NETWORK

Consumers will be unable to enjoy any of the advantages of VoIP without the presence of a reliable network infrastructure. Disparate regulatory treatment that favors one method of providing voice service over another not only violates the principles of technological and competitive neutrality, it can place at risk the reliability of carriers' underlying networks. During the December 1st VoIP Forum, Commissioner Jonathan

[1] 47 U.S.C. §153(37). The median number of access lines served by individual OPASTCO members is 2,650. OPASTCO members have higher per-customer costs due to circumstances such as geographically large and sparsely populated service areas, and longer distances between the central office and customer locations. *See* "Rural Task Force White Paper #2: The Rural Difference" at http://www.wutc.wa.gov/rtf.

Adelstein concurred, warning against allowing "the rise of VoIP to undercut the very networks that carry it."[2]

How voice providers using VoIP technology actually deliver services to consumers and route calls merits further study by the Commission. At some point, most providers of this type of service avail themselves of the highly reliable public switched telephone network (PSTN) to originate, transport, or complete voice calls. Yet voice providers using VoIP technology offer little or no financial support for the growth and upkeep costs of the PSTN.

Compared to their circuit-switched counterparts, VoIP service providers currently enjoy favorable regulatory treatment that, if continued over the long term, will undermine the reliability of the nation's ubiquitous telecommunications network. Voice providers using VoIP technology claim to be exempt from contributing to the Universal Service Fund (except perhaps as "end users"). If these service providers are exempted from contributing, then customers of other providers will have to pay more in order to sustain the integrity of the Fund. This places the Fund's future viability at risk, and runs counter to section 254(b)(5) of the 1996 Act, which calls for "specific, predictable, and sufficient" mechanisms to preserve and advance universal service.

Voice providers using VoIP technology also claim immunity from payment of access charges. Access charges allow small LECs to recover the costs of originating, terminating, and transporting traffic over their networks. The use of VoIP technology does not reduce the costs incurred by small carriers when they provide access services for these calls. Voice providers using VoIP technology claim to compensate LECs for access

[2] Statement of Commissioner Jonathan S. Adelstein, Voice Over IP Forum (December 1, 2003), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-241774A1.doc.

costs through the rates they pay as end users. However, end user rates are not designed to recover LECs' costs of providing access. Permitting carriers that use VoIP technology to avoid paying access charges allows them to obtain below-cost access to the local network. This necessarily impedes the LEC's ability to maintain reliable, high-quality service. Therefore, the adoption of VoIP technology should not absolve any service provider of their obligation to adequately compensate LECs for access to the local loop.

Many OPASTCO members obtain over 60 percent of their operating revenues from access charges and universal service support mechanisms. Without adequate cost recovery from these revenue sources, the ability of small LECs to continue providing basic services at affordable rates would be seriously compromised. Furthermore, it would inhibit small LECs from investing in the network upgrades necessary to provide advanced services. This is contrary to the goals of section 706 of the 1996 Act, which seeks to encourage the availability of advanced services in all areas of the nation, including rural areas.

SUBSTITUTABLE SERVICES SHOULD BE SUBJECT TO EQUITABLE REGULATORY TREATMENT

In its 1998 Report to Congress, the Commission observed that "the classification of a service under the 1996 Act depends on the functional nature of the end-user offering."[3] If the services offered by a LEC, which are classified as telecommunications services, can be replaced with a service offered by a voice provider using VoIP technology, then this substitute service must also be a telecommunications service based on the Commission's "functionality" test. By offering consumers a replacement service for a LEC's service offering, while simultaneously asserting to policymakers that it is not offering a telecommunications service, voice providers using VoIP technology are trying to exploit regulatory arbitrage in order to gain the upper hand in the marketplace.

The Commission should adhere to the principles of competitive and technological neutrality in order to avoid having government policy, rather than consumer choices, determine the winners and losers in the marketplace. Clearly, services that provide direct substitutes for each other should not be subject to different regulatory classification.[4] The negative effects of inequitable regulatory treatment tend to have a greater impact on small carriers that serve sparsely populated markets, where the costs of providing service are higher on a per-customer basis. To classify providers of voice service differently based solely on the technology they use to transmit voice signals would be blatantly discriminatory.

CONCLUSION

OPASTCO members are among the industry leaders in bringing new, innovative services to consumers in rural areas. The consumers served by small rural ILECs have been among the first to enjoy advances such as digital switching, broadband access, and video over digital subscriber line (DSL) services. If the Commission seeks to continue encouraging infrastructure and service deployment in rural areas, it must ensure that the underlying networks that deliver voice, data and video to consumers remain reliable. A specific, predictable, and sufficient Universal Service Fund and equitable regulatory treatment of service providers are both necessary to guarantee that consumers in rural

[3] *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11543 (1998) (1998 Report).

[4] "[S]ound regulatory policy should, where appropriate, harmonize regulatory rights and obligations that are attached to the provision of similarly-situated services across different technological platform[s]." *Remarks of Michael K. Powell, Chairman, Federal Communications Commission, at the Broadband*

areas maintain ubiquitous, affordable access to a modern and reliable telecommunications infrastructure.

Respectfully submitted,

THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

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

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

By: /s/ John McHugh
John McHugh
Technical Director

21 Dupont Circle, NW
Suite 700
Washington, DC 20036

(202) 659-5990

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Technology Summit, US Chamber of Commerce, Washington, D.C. (April 30, 2002), available at http://www.fcc.gov/Speeches/Powell/2002/spmkp205.html.