

TESTIMONY OF

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ON BEHALF OF

HOME TELEPHONE COMPANY

And

**THE ORGANIZATION FOR THE PROMOTION
AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES**

Before the

**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON CONTRACTING & TECHNOLOGY**

**“THE DTV TRANSITION AND SMALL BUSINESSES:
SMALL FIRMS CONTRIBUTING TO A BIG CHANGE”**

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Introduction

Good afternoon, Mr. Chairman and members of the committee. I appreciate the opportunity to testify before you today. My name is Keith Oliver, Senior Vice President of Corporate Operations of Home Telephone Company in Monks Corner, South Carolina. Home Telephone is a small business, and is classified as a rural telephone company under the 1996 Telecommunications Act. In addition to providing voice services, like most rural telephone companies, Home Telephone also provides broadband and video services to the homes and small businesses in our community.

I am also here in my role as Chairman of OPASTCO - the Organization for the Promotion and Advancement of Small Telecommunications Companies. OPASTCO is a national trade association made up of more than 600 small, local telecommunications carriers serving rural areas. Rural carriers are predominately small businesses, having an average of 22 employees. OPASTCO members embody the universal service concept, offering high-quality services to all of the customers in their territories, which are often not lucrative enough to attract the major national carriers. Collectively, our members serve approximately six million customers in 47 states.

OPASTCO Supported Congress' Decision to Implement the DTV Transition

OPASTCO was part of the High Tech DTV Coalition, which encouraged Congress' decision to institute a hard date for the DTV transition. We supported this effort because the 700 MHz spectrum that will be made available by the transition is ideally suited to delivering broadband services to customers, especially in sparsely populated areas that are not lucrative enough to attract large national carriers. Because of this, as well as for other reasons I will relate below, the DTV transition has, for us, always been about deploying more broadband to homes and small businesses in rural America using both wireless and landline technologies.

The 700 MHz Auction Favored Large Carriers at the Expense of Small Providers

OPASTCO had hoped that the auction of the 700 MHz spectrum would provide small companies with affordable access to viable wireless broadband spectrum. However, due to the decision of the Federal Communications Commission to auction the spectrum off in large geographic licensing areas, small providers were able to obtain very little of that prime spectrum. While some tout the fact that rural companies successfully bid on 11 percent of the total licenses, looking at the license blocks and their associated coverage capabilities offers a more telling perspective. When measured in terms of population coverage and the makeup of the spectrum blocks in the 700 MHz auction, small rural carriers were able to obtain less than 1.5 percent, according to an analysis performed by the Rural Telecommunications Group. We feel that this result is not in accord with the intent of Congress. Section 309(j) of the Communications Act directs the FCC to ensure that small entities, specifically including rural carriers, have a reasonable chance of obtaining spectrum. We have repeatedly asked the FCC to adhere to Section 309(j) by auctioning spectrum in smaller geographic licensing areas so that community-based

carriers can have a fighting chance to bid successfully against the large nationwide providers.

Home Telephone was among the small businesses that participated in the 700 MHz auction, but like so many others, we were outbid by the likes of Verizon and AT&T. The large providers will probably build out networks in the lower cost, more populated areas. But unlike small carriers, they do not have the incentive to build wireless networks in higher cost areas with lower population densities. The end result is that people in rural areas will have less access, if any, to wireless broadband services. If small providers had been able to obtain this spectrum, they would build out networks and provide service to homes and businesses in rural communities.

Small geographic licensing areas were successfully used in the early days of analog cellular telephone service, when spectrum licenses were based in part on Rural Service Areas. This resulted in cellular telephone service being made available in many rural areas that would not have had it otherwise. Instead of maintaining this winning formula, the FCC has since moved to larger license areas that, due to their size, are too expensive for small companies to obtain. Theories that large companies would parse out portions of spectrum to smaller entities never became a reality. Therefore, consumers and businesses in many rural areas have less access, if any, to innovative wireless services.

Small carriers have been pleading for years with the FCC and Congress to return to the small license areas that made Section 309(j) a success. But as wireless service becomes more important to consumers, wireless spectrum, including 700 MHz and its potential for broadband applications, is increasingly out of reach for small carriers that are most dedicated to serving the homes and businesses of rural communities.

Rural Carriers and Public Notification

Small carriers understand the need to help inform the public about the DTV transition, and we are happy to do our part. However, the federal government has paid scant attention to the very real costs that are associated with this undertaking. Specifically, the FCC has required small carriers to notify customers who participate in programs designed to help low-income consumers obtain and maintain telephone service about the DTV transition by including information in telephone bills. Yet the FCC has barely acknowledged that there are any costs associated with doing so. In addition to placing a disproportionate burden on small carriers, it is a cause for even greater concern because the FCC is now considering expanding this requirement to all consumers of telephone services. There is insufficient consideration of how small carriers will recover costs such as printing and extra postage. Most carriers' bills do not have enough room left on them to include notification of the transition without adding another piece of paper to the mailing.

In addition, many small carriers are not large enough to have their own billing system. Instead, they obtain billing services from contractors in order to keep costs down for their customers. Changes to billing regulations mean that the smallest carriers have to alter

their arrangements with billing contractors, which can incur additional charges. There is little recognition that these new requirements result in new costs to small businesses.

Furthermore, it is not just the costs of making the changes that need to be accounted for. When we include new information on phone bills, customers understandably call the carrier who sent them the information. Even if we put the DTV phone number and website on the notifications, it is we, the carriers, who receive calls from confused consumers. Therefore, we have to take extra time to train our customer service representatives on how to help customers who have questions. When customers call about the DTV transition, other customers with questions about telephone, or broadband, or video services will experience longer waits. This may not be a major problem for large carriers with thousands of customer service staffers. But rural carriers have an average of four customer service representatives (CSRs). When you only have four CSRs, taking calls on an issue your company has no control over detracts from your ability to serve your customers.

Furthermore, as noted earlier, there is a proposal that would require carriers to send notifications to all of our customers, not just those in the low income programs. In Home Telephone Company's case, that would cost us an additional \$23,000 in total. While this might not sound like a lot of money to the large nationwide telephone companies, this is a significant expenditure for a small business. And this does not take into account the additional training and staff time that we will have to dedicate to these efforts.

Again, small carriers understand the importance of informing the public about the DTV transition, but the costs associated with these requirements should not be dismissed. If we are expected to absorb these costs, both in terms of funding and scarce personnel resources, it will slow our efforts to continue expanding broadband and other innovative services to our customers.

There are also a number of technological issues related to equipment, mostly at the customer's location, impacted by the DTV transition that are perhaps too detailed to go into here today. Suffice it to say that we are addressing these technical issues at the FCC, where the record is mixed. Sometimes the FCC asks the right questions, but other times it is a challenge to have the concerns of small broadband video providers acknowledged.

On a related note, I would like to mention here that we are very encouraged by the introduction in the Senate of S. 2902, the "Independent Office of Advocacy and Small Business Regulatory Reform Act." This legislation, introduced by Senator Olympia Snowe of Maine, would enhance the federal government's efforts to consider the impacts of new rules on small businesses and look for alternatives. This is an area where there is much room for improvement, and we hope that the House Small Business Committee will give similar legislation very serious consideration.

Dual Carriage

I would now like to turn our attention to where it appears that the FCC might be moving in the right direction. As the transition to DTV commences, the FCC has determined that video operators must convert many digital broadcast signals into analog format for its analog subscribers. If the station has a High Definition digital signal, the FCC obligates the operator to carry that signal also. This is known as the dual carriage obligation.

Many small carriers are providing video services using DSL or fiber to the home technologies; or they hope to do so soon. The more recent variants of these technologies are all-digital to start with. In these cases, the dual carriage rule has no impact. However, smaller video operators that have been serving customers for years simply may not have the network capacity to meet this requirement. This is especially true when you consider how many extra, unwanted channels that programmers require small cable companies to carry. These unwanted channels, linked to “must have” content in a practice known as tying, force small video providers to take up scarce space in the channel lineup and further limit their ability to comply with the dual carriage rule.

Fortunately, the FCC is considering exempting the small providers whose networks do not have the capacity to meet this mandate. We certainly hope the FCC will expeditiously grant this exemption.

Access to Content Enables Broadband Deployment

The FCC is also moving in the right direction when it comes to access to video content. For example, we commend the FCC for considering how the practice of forced tying of unwanted channels with “must have” programming, mentioned above, impedes competition and further broadband deployment. In order for small carriers to provide viable video services to customers, programming must be available under reasonable terms and conditions. This is not just a video competition issue. The FCC has found firm evidence that when video and broadband services are bundled together, customers buy more of each. This reduces barriers to investment in broadband infrastructure, even in high cost areas served by small telephone companies.

The FCC was also correct when it maintained a ban against exclusive contracts for certain video content that is necessary to provide a viable service to customers. The FCC determined that this step was necessary because it found that programmers retain the ability and incentive to deny or restrict access to content, and have done so when they are given the opportunity.

But these are just the first small steps that the federal government can and should take in order to encourage more broadband deployment by preserving and extending access to video content for small providers and their customers.

Congress also should encourage the FCC to close what is known as the terrestrial loophole. This is a holdover of an interpretation of the program access rule from before

the rise of fiber networks, when satellite was essentially the only way to deliver video content to small cable companies. The loophole allows vertically integrated programmers to get around program access rules, so they can restrict the content that is available to their smaller competitors. Again, this impedes not just customer choice in the video market, but also broadband deployment.

The retransmission consent process is also in need of reform. This is particularly important in light of the DTV transition. I am not an engineer, but technical people tell me that customers who live furthest from broadcast towers and are barely able to pull in analog signals may have trouble receiving digital signals over the air. This might increase their interest in receiving service from a cable or broadband video provider like Home Telephone. But retransmission consent rules play a large role in the prices small broadband and cable companies have to pay for video content, which of course determines what we have to charge customers.

The current retransmission consent rules, which were created before we saw the media consolidation that exists today, permit broadcasters to demand payment from small cable and telephone companies for their content. We have no argument with that, but the rules also prohibit small providers from going to other nearby markets to obtain the same content at better rates. Congress should work with the FCC to reform the retransmission consent process to allow market forces to work and not let the stranglehold that a handful of companies have on programming further impede broadband investment. H.R. 2821, the "Television Freedom Act" introduced last year, would allow video providers to obtain content from adjacent markets and would be a good first step towards letting the free market help control video costs.

Let me emphasize that OPASTCO does not favor intrusive regulation of the video content market. We only seek reforms of existing regulations that were never intended to restrict the ability of small broadband providers to compete in the video market. But due to changes in the marketplace since these rules were put in place, that is the effect they have today. We only ask for a modernization of the rules that will let us serve customers and expand broadband deployment. Chairman Martin and the Commissioners at the FCC appear to understand these problems, and are asking many of the right questions. We hope that you will encourage the FCC to reform rules regarding tying and retransmission consent, and to close the terrestrial loophole.

In conclusion, let me stress again the need for government to consider the impacts on small broadband providers when it imposes new regulations, however well intended. Congress directed that small carriers should have a reasonable chance to obtain access to wireless spectrum, including broadband spectrum like 700 MHz. Yet the way auctions and licenses are structured, this has become increasingly difficult. Finally, there is an intrinsic link between access to video content and the deployment of broadband. Therefore, I hope that this subcommittee, and Congress as a whole, will encourage the FCC to reform outmoded content access rules and reduce the stranglehold that a few large programmers are using to impede video competition and further broadband deployment. Thank you very much.