Testimony of Leslie Greer

2012 ERISA Advisory Council

Managing Disability Risks in an Environment of Individual Responsibility

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Thank you for the opportunity to provide comments on the topic, Managing Disability Risks in an Environment of Individual Responsibility. My name is Leslie Greer and I am speaking today on behalf of the National Telecommunications Cooperative Association. I serve as the vice president of benefits and technology operations for the association and have over 30years experience in the rural telecommunications industry. My comments today are from the viewpoint of small employers who provide the telecommunications network for rural America.

Background on NTCA and NTCA-Sponsored Employee Benefit Plans

The National Telecommunications Cooperative Association, also known as NTCA, is a full-service nonprofit trade association serving more than 570 small and rural telephone cooperatives and commercial companies. NTCA has offered a selection of employee benefit plans to its membership to meet their welfare and retirement plan needs for over 50 years. The NTCA-sponsored benefit plans are multiple employer plans, which are only available to members of the association.

Rural telecommunications companies from Florida to Montana to Alaska share a common challenge of recruiting and retaining the skilled staff required to build and maintain modern telecommunications infrastructure. Offering competitive employee benefits is a key element to their staffing success. NTCA members are often a major employer in their rural areas. Providing for their employees' financial well being supports the economic vitality of their community.

The NTCA sponsored benefit plans were established as a continuation of NTCA's support to rural telecommunications companies and their communities. Small rural employers are like many small employers in wanting to provide a strong, competitive compensation package, including benefits for their employees. Having a multiple employer plan providing a full array of health and welfare benefits at competitive prices supports NTCA's mission. NTCA has enjoyed tremendous member support over the years and the benefit plans were created based on member desire. NTCA has offered a defined benefit plan since 1959. This plan remains strong today with over 370 participating employers and over 14,000 participants and retirees. In 1972, NTCA began offering a defined contribution 401(k) Savings Plan. Initially, this plan was primarily used as a supplemental retirement savings opportunity in conjunction with the traditional pension plan. Similar to national trends, we have seen this plan become the primary retirement instrument for many employers. Today the defined contribution plan benefits over 500 participating employers with over 19,500 participants. NTCA also offers a self-funded welfare plan that was instituted in 1975. This plan uses a Voluntary Employees Beneficiary Association (VEBA) trust[1] to provide health, dental, life and disability benefits to participating employers. Our welfare plan serves approximately 550 participating employers with over 40,000 covered lives. The average company size of our participating employers is 28 employees.

Each of these benefit plans are governed by the NTCA board of directors and trust committees comprised of NTCA members. The trust committees retain expert third party professionals for legal, actuarial and investment advice. For the welfare plan, appropriate reserves are maintained to meet projected benefit obligations based upon recommendations from the plan's actuary. Reserve levels and required employer contributions are routinely reviewed by the trust committee.

NTCA Disability Benefits

NTCA's comprehensive disability plan provides income replacement upon disability, and, if elected by the member company, it also provides continuing contributions to the retirement plans and waiver of premium for health coverage. The disability plan pays income replacement at a level of 70% of compensation as of the date of disability[2]. Additionally, continuing contributions for health coverage and to the retirement plans ensure a disabling accident or illness will not devastate an employee's financial security. Health coverage and retirement contributions also continue at the level in effect as of the date of disability. I will refer to these continued contributions as disability waiver benefits.

NTCA disability plan employer participation statistics are as follows:

- 387 employers offer NTCA's disability plan benefits
- 77% of those employers provide disability waiver benefits that continue contributions to retirement plans. Of those, 69% offer disability benefits that continue contributions to the defined contribution retirement plan (8% continue contributions to the defined benefit pension plan and not the defined contribution plan).
- 16% offer medical waiver, but not continuation of retirement plan benefits
- 7% offer income replacement benefits only

NTCA members select our disability plan because it meets their objective to secure the financial futures of employees should they become disabled. Employers provide disability waiver benefits to ensure disability income is not eaten up by medical insurance premiums or

[1] Voluntary Employees Beneficiary Association (VEBA) as defined in IRS Code Section 501(c)(9)
[2] Taxation of income replacement benefits will vary depending on the portion of the cost of coverage, if any, paid by the employee with after-tax contributions. Employee cost-sharing requirements for disability benefits may not favor highly compensated individuals.

uncovered medical costs and retirement savings are not depleted. Disability income may be used to pay for the living expenses and retirement savings continue to grow. This helps facilitate a return to wellness and work by ensuring the employee can afford needed medical care and adheres to proper treatment plans. Disabled employees are not forced to make difficult budget decisions between basic living expenses and medical care at a time when they can least afford it.

The NTCA disability plan is a self-funded plan using a VEBA trust to accumulate assets to pay promised benefits. However, this approach differs from an employer that chooses to self-fund disability benefits on their own because the funds are commingled in the VEBA trust for the benefit of all participating employers. The disability risk is transferred to the plan and spread among a larger population. I would also like to clarify that NTCA's multiple employer welfare plan is excepted from the definition of a "MEWA" under ERISA[3].

What Makes NTCA's Plan Unique?

NTCA's disability benefits provide a greater level of security than some disability insurance by using a definition of disability that initially considers an employee disabled if he or she cannot work at their present job. This approach recognizes that employment opportunities in rural areas may be limited and facilitates returning to work with their current employer rather than relocating outside the community. NTCA's plan defines total disability for the first two years as the inability to substantially engage in or perform his or her *present occupation* by reason of any medically-determinable physical or mental impairment. After the first two years, for the remainder of any continuous period of disability, total disability is defined as the inability by reason of any medically-determinable physical or mental impairment, to substantially engage in or perform *any occupation* for which the employee is or becomes qualified for by reason of education, training, or experience. After two years of disability, the participant must meet one of the following conditions to continue to receive disability benefits:

- be determined eligible for Social Security Disability Insurance
- is unable to perform any job comparable in scope and skill to the pre-disability position
- is at least 60 years of age

If one or more of these conditions is met, disability benefits continue until the employee is no longer totally disabled or reaches Social Security retirement age as an income replacement bridge to Social Security retirement benefits.

In an effort to get people back to work, the plan also funds the costs of rehabilitation programs and vocational training. Additionally, job placement services are available for up to one year once the individual is no longer disabled.

[3] Multiple Employer Welfare Arrangements (MEWA) as defined in ERISA Code Section 3(40)

NTCA's disability benefits also differ from some common industry policies in two ways. First, the income replacement of 70% of pre-disability income is more generous than typical policies which replace between 50% - 66 2/3% of pre-disability income. Second, most long-term disability policies also exclude work-related injuries. NTCA's benefits coordinate with workers' compensation insurance.

The continuation of retirement plan contributions as disability waiver benefits is perhaps the most unique feature of the NTCA disability plan. As mentioned earlier, continued retirement contributions are critical to ensure a period of disability does not undermine an employee's financial security in retirement. Because our plan continues contributions to either the defined benefit or defined contribution plan (or both), the disability risk to the employee is not greater if the employer does not offer a traditional pension plan. Unfortunately, this advantageous feature of NTCA's disability plan is in jeopardy from proposed IRS regulations published in 2007[4], which create adverse tax consequences for this type of arrangement. The proposed rules treat contributions as immediately distributed to the employee then re-contributed to the employee's account. This results in taxable imputed income to the employee. Taxable income for which there was no cash compensation is likely a financial hardship for disabled individuals living on a reduced income. Furthermore, this tax treatment could make the amounts ineligible as plan contributions. Included with this testimony is a copy of a letter NTCA submitted to the Internal Revenue Service in November 2007 to comment on the proposed regulations.

In other areas, the plan generally follows insurance industry standards, such as providing offsets for Social Security Disability Income, workers' compensation, or retirement plan income. These offsets are designed to encourage return to work by ensuring total disability income is not greater than wages from employment. Offsets also help control the cost of disability plans for the employer. Additional detail on NTCA's disability plan benefits and definition of total disability may be found in the attached excerpt from the NTCA welfare plan Summary Plan Description.

Success Rate for Return to Work and Disability Claims Appeals

A review of disabled participants receiving benefits under NTCA's disability plan over the past five years revealed the majority of disabled participants remain unable to work due to their disabling condition. Ninety one percent are deemed disabled by Social Security. Of the remaining 9%, the outcomes are as follows:

- 34% reached retirement age
- 30% returned to work
- 27% are deceased

[4] 72 Fed. Reg. 46421 (Aug. 20, 2007)

- 9% no longer disabled and employment terminated by employer

NTCA's disability plan adheres to claims review and appeals procedures required under ERISA. Over the past two years, 16% of applications for disability benefits were denied upon initial application. Reasons for the initial denial of disability claims are as follows:

- 43% failed to provide requested information
- 22% returned to work prior to meeting the waiting period
- 21% failed to substantiate total disability
- 7% failed to file timely application (within one year)
- 7% disability excluded as result of an act of war

Of the claims denied upon initial application, 50% appealed the decision. Each of the appeals resulted in approval of the disability benefits claim because the applicant provided additional necessary information.

Conclusion

There is no single disability plan that will work for all employers. NTCA has tailored disability plan options that will meet our members' recruiting and retention needs while providing security from undue financial hardship and retirement protection for disabled individuals. Telecommunications services are a vital infrastructure for rural America and financially secure rural telecommunications employees are an important part of their region's economic success.

Attachments