

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

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| In the Matter of |) | |
| |) | |
| High-Cost Universal Service Support |) | |
| |) | WC Docket No. 05-337 |
| Coalition for Equity in Switching Support |) | |
| Petition for Clarification |) | |
| |) | |

**COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC. (NECA),
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION (NTCA),
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES (OPASTCO),
EASTERN RURAL TELECOM ASSOCIATION (ERTA), and the
WESTERN TELECOMMUNICATIONS ALLIANCE (WTA)**

The Commission has proposed amending sections 36.125 and 54.301 of its rules, which govern use of the Dial Equipment Minutes (DEM) factor in jurisdictional separations and the calculation of Local Switching Support (LSS), respectively.¹ Under the rules as currently written, small incumbent local exchange carriers (ILECs) experience reductions in LSS amounts when their lines increase above certain thresholds, but LSS payments are not restored when their lines decrease.² The Commission has tentatively concluded it would be in the public interest to revise existing rules to correct this problem.³

¹ *High-Cost Universal Service Support*, WC Docket No. 05-337, *Coalition for Equity in Switching Support Petition for Clarification*, Order and Notice of Proposed Rulemaking, 74 Fed. Reg. 57982 (2009), at ¶ 13 (*Order and NPRM* or *NPRM*).

² *Id.*

³ *Id.*

The national and regional associations listed above (the “Associations”),⁴ as well as several other state associations,⁵ strongly support prompt action by the Commission on the proposals set forth in the *NPRM*. Specifically, the Commission should adopt the rule amendments proposed for sections 36.125 and 54.301 of its rules, specifying that the revised rules are applicable for LSS payments and cost studies beginning with calendar year 2008.

The Associations recognize this action is no substitute for comprehensive reform of the Commission’s universal service mechanisms. The rule revisions proposed in the *Notice* would remove unintended consequences resulting from the wording of current rules, but these changes should neither prejudice nor delay much-needed overall universal service reform.

I. BACKGROUND

The Commission’s rules permit ILECs serving 50,000 or fewer lines in a study area to recover a portion of their switching costs from the universal service fund in the form of LSS payments.⁶ The amount of support for which an ILEC is eligible depends in part on a Dial Equipment Minute (DEM) weighting factor, with the highest amounts available to carriers having 10,000 lines or less in their study areas. A lower DEM weighting factor, and therefore,

⁴ NECA is a not-for-profit association of all incumbent telephone local exchange carriers. NECA has administered the Federal Communications Commission’s access charge plan for more than twenty-five years. NTCA represents more than 580 rural rate-of-return regulated telecommunications providers. OPASTCO is a national trade association representing approximately 520 small ILECs serving rural areas of the United States. ERTA is a trade association representing approximately 68 rural telephone companies operating in states east of the Mississippi River. WTA is a trade association that represents over 250 rural telecommunications companies operating in the 24 states west of the Mississippi River.

⁵ The Minnesota Independent Coalition, the Minnesota Telecom Alliance, the Montana Telephone Association and the Tennessee Telecommunications Association also support amending the LSS rules as proposed in the *Notice* and have indicated they concur in these comments.

⁶ 47 C.F.R. §§ 36.125, 54.301.

smaller LSS amounts, are available to companies with 10,001 - 20,000 lines, and the lowest weighting factor and LSS amounts are available to companies with 20,001 to 50,000 lines.⁷

The Commission modified sections 54.301 and 36.125 of its rules in 1997 and 2001, respectively, to assure that LSS payments and interstate allocations of local switching costs would continue to be adjusted downward if an eligible carrier's line count increased above a DEM weighting benchmark level during the period when the FCC generally froze other jurisdictional cost assignments.⁸ The modified rules, however, have been interpreted to bar an eligible carrier whose access line count increases above and subsequently decreases below a benchmark level from receiving switching support based on its lower line count. Instead, such a carrier receives support based on the higher line counts that it was not able to sustain. Consequently, the existing rules have been applied in a way that reduces the amount of LSS for which some small telephone companies that experienced a temporary increase in access lines would otherwise qualify, and assigns substantially different DEM weighting factors to two companies with the same line counts.

This has affected a relatively small number of companies (currently, about 88), but the impact on LSS support levels for these companies is significant. NECA estimates that the "one-way ratchet" effect currently causes these companies to lose about \$27 million in LSS support payments per year, which they would otherwise be eligible to receive.⁹

⁷ 47 C.F.R. § 36.125(f).

⁸ *Id.* See also *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 12 FCC Rcd. 11382 (2001).

⁹ For pool participants, NECA based its estimate on company-specific LSS data for 2009, provided in support of the 2009 LSS projections with USAC. In these instances NECA calculated the difference in support levels by applying the change in the DEM weighting component of the LSS factor to the company's LSS data. Since company-specific data was not available for non-pool companies, NECA multiplied 2009 LSS projection amounts obtained from USAC's Fourth Quarter 2009 Quarterly Administrative Filing by a percentage equal to the

The Associations initially brought this issue to the Commission's attention in 2006, as it began to consider whether to extend the *2001 Separations Freeze Order*.¹⁰ Earlier this year, however, a group of companies describing themselves as the "Coalition for Equity in Switching Support" (the Coalition) filed a Petition for Reconsideration of the Commission's *2009 Separations Freeze Extension Order*,¹¹ formally asking the Commission to clarify that the DEM weighting thresholds specified in the rules were intended to apply to carriers with either increasing or decreasing numbers of access lines.¹²

In its October 9, 2009 *Order* in this proceeding, the Commission denied the Coalition's petition, finding no evidence that the rules were intended to be construed as requested by the Coalition.¹³ The Commission did, however, tentatively agree its rules should be amended to permit incumbent LECs with declining numbers of access lines to use a higher DEM weighting factor in performing jurisdictional separations and calculating LSS.¹⁴ In the *Notice* portion of

percentage increase in the DEM weighting component. For companies dropping below the 50,000 line threshold, for which NECA did not have company-specific data or existing LSS amounts, NECA multiplied the company's line count by a per-line LSS average for similarly-sized companies. Since a number of factors, including additional changes in cost levels and numbers of access lines affect actual LSS payment amounts and numbers of companies qualified to receive LSS, the above estimates are subject to change.

¹⁰ See, e.g., Letter from Joseph A. Douglas, NECA, to Marlene H. Dortch, FCC, CC Docket No. 80-286 (Dec. 12, 2006); Reply Comments of the Associations, CC Docket No. 80-286 (Nov. 20, 2006), at 7-8; Comments of the Associations, CC Docket No. 80-286 (Aug. 22, 2006), at 10-11; Letter from Joseph A. Douglas, NECA, to Marlene H. Dortch, FCC, CC Docket No. 80-286 (Mar. 22, 2006), at 2.

¹¹ *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket 80-286, Report and Order, 24 FCC Rcd 6162 (2009) (*2009 Separations Freeze Extension Order*).

¹² See Coalition for Equity in Switching Support Petition for Clarification, CC Docket Nos. 80-286 and 96-45 (filed Jan.8, 2009), at 11-15 (*Coalition Petition*).

¹³ *Order and NPRM* at ¶ 7.

¹⁴ *Id.* at ¶ 13.

its October 9 *Order and NPRM*, the Commission accordingly proposes to amend relevant portions of sections 36.125 and 54.301 of its rules as follows:

Section 36.125(j) would be revised to read:

(j) If the number of a study area's access lines increases or decreases such that, under section 36.125(f) of this part, the weighted interstate DEM factor for 1997 or any successive year would change, the weighted interstate DEM factor appropriate to the study area's current access line count shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor.

Similarly, section 54.301(a)(2)(ii) would be revised to read:

(a)(2)(ii) If the number of a study area's access lines increases or decreases such that, under section 36.125(f) of this chapter, the weighted interstate DEM factor for 1997 or any successive year would change, the weighted interstate DEM factor appropriate to the study area's current access line count shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor.¹⁵

By specifying that a new DEM weighting factor may be calculated if the number of a study area's access lines increases *or decreases* across a threshold, the proposed rule amendments would thus eliminate the "one-way ratchet" effect for LSS payments for small companies. The *NPRM* does not, however, discuss potential time periods that would be covered by the proposed rule amendments (*i.e.*, whether affected carriers would calculate revised DEM weights for prior calendar year periods or prospective periods only).¹⁶

¹⁵ *Id.*, Appendix, at 11.

¹⁶ Commission rules governing the calculation and submission of LSS data generally require carriers to submit projected accounting data by October 1 of each calendar year (47 C.F.R. § 54.301(b)); submission of true-up to prior projections by December 31 of the year following the calendar year (47 C.F.R. § 54.301(e)(1)); and final adjustments by 15 months after the calendar year under study (47 C.F.R. §§ 54.301(e)(2)(iv)). Because DEM weight calculations and LSS payments are subject to revision in periods that extend beyond the end of the year at issue, the Associations recommend the Commission clarify in its order adopting rules a specific period (*i.e.*, calendar year 2008) for which the rules would begin to apply.

II. DISCUSSION

The Associations strongly support adoption of the proposed rule amendments. It has been clear for some time the “one-way ratchet” rule unfairly causes small incumbent LEC ETCs that suffer declining numbers of access lines to receive less LSS than they would be eligible for if their number of access lines had not exceeded the thresholds established in the rules. The record also shows the rule as currently written has caused, or threatens to cause, small incumbent LEC ETCs undue hardship.¹⁷

As the Coalition has previously pointed out, a small carrier that gains, then loses, access lines is not in a meaningfully different situation than a similarly-sized small carrier that suffers no gain or loss.¹⁸ Indeed, a carrier that purchases equipment designed to support a greater number of access lines but then loses those access lines may be even more disadvantaged than a carrier that had never made purchasing decisions based upon a higher access line count.¹⁹ The current rules therefore appear inconsistent with the Universal Service goals stated in section 254 of the Telecommunications Act of 1996,²⁰ and are inequitable as well.

In an era where all companies in the United States are experiencing significant financial pressure and where wireline companies are experiencing reductions in access lines served, the “one-way ratcheting” of LSS has the unintended effect of reducing or eliminating much-needed high-cost universal service support for small carriers that would otherwise qualify for a higher DEM weighting factor and therefore higher LSS amounts. To prevent further imposition of

¹⁷ *Coalition Petition* at 3-7; Letter from John Logan, Counsel to the Coalition for Equity in Switching Support, to Marlene Dortch, FCC, WC Docket No. 05-337, CC Docket No. 80-286 (Apr. 30, 2009).

¹⁸ *Id.* at 14-15.

¹⁹ *Order and NPRM* at ¶ 14.

²⁰ 47 U.S.C.A. § 254.

hardship on small rural ILECs and eliminate the inequities in LSS between similarly-situated companies, the Commission should promptly adopt the rule amendments proposed in the *Notice*.

As noted above, the amount of annual LSS at issue for all telecommunications carriers that might qualify should the Commission adopt the proposed rule amendments is approximately \$27 million. This amount is less than one-half of one percent of the overall USF, and less than one percent of the total high-cost fund. Adoption of the proposed rule revisions would thus have no significant impact on the overall USF size. On a company-specific basis, however, this additional support can make a significant difference in assisting rural ILECs to deliver high quality, affordable services to all of the consumers in their service areas.

As noted above, in adopting the rule amendments proposed in the *NPRM* the Commission should specify that the revised rules apply to LSS payments and cost studies beginning with calendar year 2008. Under section 54.301 of the Commission's rules, carriers are required to submit projected accounting data to the Universal Service Administrator by October 1 of each calendar year.²¹ Companies then finalize their LSS payments by reporting actual data to USAC by December 31 of the following year.²² Thus, if the Commission acts promptly, the revised rules can be made effective in time for 2008 LSS true-up data to be submitted at the end of this year.²³ This will provide substantial benefits to carriers who have been adversely impacted by the current rule in prior periods.²⁴

²¹ 47 C.F.R. § 54.301(b).

²² 47 C.F.R. § 54.301(e)(1).

²³ See 47 C.F.R. § 1.427(b) (permitting the Commission on good cause to make a rule effective less than 30 days after publication in the Federal Register). In any event, LSS payments for calendar year 2008 will remain subject to adjustment until March 31 of 2010, see 47 C.F.R. § 54.301(e)(2)(iv), thus providing ample time for Commission action in this proceeding.

²⁴ The Commission can accomplish this result by directing USAC to revise 2008 and 2009 LSS amounts in its next Quarterly Administrative Filing and to make payments to affected companies

The Associations recognize that amending the Commission's DEM weighting and LSS payment rules is no substitute for overall reform of the USF. As Commissioner Baker pointed out in her separate statement appended to the Commission's *Order and NPRM*,

[T]he Universal Service Fund is long overdue for a comprehensive overhaul, in light of significantly changed circumstances in the communications marketplace. . . . I hope we will consider comprehensive reform, and I look forward to working with my Commission colleagues to develop a thoughtful, practical, and pragmatic universal service program that is appropriately tailored for the future of communications.

The Associations completely agree with Commissioner Baker in this regard, and look forward to assisting the Commission in the process of developing such "thoughtful, practical, and pragmatic" approaches to comprehensive universal service reforms in the coming months.

III. CONCLUSION

The Commission should adopt the proposed amendments to sections 36.125 and 54.301 of its rules, so as to permit carriers experiencing reductions in lines to receive LSS payments based on their actual line sizes, rather than prior levels. By revising the rules as proposed in the *NPRM*, the Commission will assure these companies receive LSS payments more reasonably reflecting their size, and eliminate the inequitable treatment of companies losing lines compared to other similarly-situated carriers. Further, the Associations recommend the Commission

beginning with the April 2010 payment month. In addition, USAC should be directed to revise 2010 LSS projections to reflect the new weighting beginning with the January 2010 payment month.

specify in its Order adopting the proposed rules that LSS payments based on the new rules should be effective beginning with calendar year 2008 data.

Respectfully submitted,

November 24, 2009

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 24th day of November, 2009 by electronic filing or e-mail to the persons listed below.

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