



February 5, 2009

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Written *Ex Parte* Presentation

**Re: Jurisdictional Separations and Referral to the Federal-State Joint Board
CC Docket No. 80-286**

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

Dear Ms. Dortch:

The Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”),¹ the National Exchange Carrier Association (“NECA”),² the National Telecommunications Cooperative Association (“NTCA”),³ the Western Telecommunications Alliance (“WTA”),⁴ and the Independent Telephone and

¹ OPASTCO is a national trade association representing over 530 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37). In addition to local phone service, OPASTCO members provide a wide range of other services, including broadband, video, wireless, long distance, and competitive local exchange.

² NECA is a non-stock, non-profit association formed in 1983 pursuant to the FCC’s Part 69 access charge rules. See generally 47 C.F.R. §69.600 *et seq.* NECA is responsible for filing interstate access tariffs and administering associated revenue pools on behalf of over 1200 incumbent local exchange carriers (“ILECs”) that choose to participate in these arrangements.

³ NTCA is a national industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 587 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service rural local exchange carriers and many of its members provide broadband, wireless, video, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended. NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

⁴ WTA represents more than 250 rural telephone companies in 24 states west of the Mississippi River. On average, WTA members serve fewer than 3,000 customers, and fewer than 500 customers per exchange. Its members provide voice, broadband, video and wireless services in some of the highest cost and lowest density areas in the country with some of the most rugged terrain, harshest weather conditions and socioeconomic situations arguably making it the nation’s most difficult areas to serve.

Telecommunications Alliance (“ITTA”)⁵ (collectively “the Associations”) hereby submit this *ex parte* letter in support of the Petition for Clarification filed by the Coalition for Equity in Switching Support (“Coalition”) on January 8, 2009.⁶ The Associations encourage the Commission to clarify or modify sections 36.125(j)⁷ and 54.301(a)(2)(ii)⁸ of its rules to permit small ILECs to receive local switching support (“LSS”) based upon their current number of access lines.

In 2006, OPASTCO, NECA, ITTA, NTCA and ERTA objected to the one-way ratcheting of LSS occurring by operation of sections 36.125(j) and 54.301(a)(2)(ii) of the Commission’s rules.⁹ Under these rules, a small ILEC’s LSS is reduced when its number of access lines increases and crosses a dial equipment minute (“DEM”) weight threshold. However, a carrier whose access line count decreases and crosses a DEM weight threshold is not permitted to adjust their DEM weighting factor to its proper level and receive an increased amount of LSS. The Associations noted that the effect appeared to be unintended, and results in smaller companies being required to use a DEM weighting factor applicable to larger companies.¹⁰

In the Associations’ view, the current interpretation of the rules is not consistent with the universal service goals of the Telecommunications Act of 1996 (“1996 Act”), nor is it equitable for small ILECs who have lost access lines. Small, rural ILECs confront higher per-subscriber switching costs than their larger counterparts because they lack the number of subscribers or the concentrated subscriber population that would enable them to take advantage of economies of scale and scope. When it implemented the universal service provisions of the 1996 Act, the Commission established an explicit support mechanism, LSS, designed to partially offset those higher costs in order to ensure that small rural ILECs could make necessary upgrades to their switching equipment and provide affordable, quality service to their rural customers. The FCC has acknowledged that the absence of LSS could produce a hardship for customers in areas served by small rural ILECs.¹¹ Indeed, the Commission has noted that without LSS, a small

⁵ ITTA is an alliance of mid-size telephone companies. ITTA members provide a broad range of high-quality wireline and wireless voice, data, Internet, and video services to over 30 million customers in 44 states. ITTA members primarily serve rural and small markets with low population densities.

⁶ *Petition for Clarification filed by Coalition for Equity in Switching Support (Cross Telephone Company, Hargray Telephone Company, Inc., Hart Telephone Company, Ketchikan Public Utilities, Northeast Florida Telephone Company, Randolph Telephone Membership Corporation, and Star Telephone Membership Corporation)*, CC Docket No. 80-286, CC Docket No. 96-45 (fil. Jan. 8, 2009) (“Petition”).

⁷ 47 C.F.R. § 36.125(j).

⁸ 47 C.F.R. § 54.301(a)(2)(ii).

⁹ *Comments of the Independent Telephone and Telecommunications Alliance; National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association: Organization for the Promotion and Advancement of Small Telephone Companies; and the Eastern Rural Telecom Association*, CC Docket No. 80-286 (fil. Aug. 22, 2006), pp. 10-11.

¹⁰ *Id.*

¹¹ *See, e.g., Federal-State Joint Board on Universal Service; Dixon Telephone Company; Lexcom Telephone Company; Citizens Telephone Company of Higginsville, Missouri; Petitions for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date*, CC Docket No. 96-45, Order, 21 FCC Rcd 1717, 1719-1720, ¶ 8 (2006).

carrier may not have the ability to provide and maintain quality service at just, reasonable, and affordable rates.¹²

In an era where all companies in the United States are experiencing significant financial pressures 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 hardship on small rural ILECs, the Commission should act promptly to clarify the ambiguous rules in a manner that will better uphold the principles contained in section 254 of the 1996 Act¹³ and expressed by the FCC, and eliminate the inequities in LSS between similarly situated companies. The Associations agree with the Coalition that the best reading of the rules is one that concludes that, after June 30, 2006, the DEM weighting factor used to determine the appropriate level of small ILECs' LSS amounts depends on that carrier's current number of access lines, regardless of whether that carrier's number of access lines may have exceeded a threshold in the past. Alternatively, the Commission could, as proposed in the Petition,¹⁴ reestablish an equitable distribution of LSS on a prospective basis by modifying its rules so as to eliminate the inequitable one-way treatment of changes in the number of access lines for small rural ILECs.

Clarifying or modifying the rules in this manner will not have a significant impact on the overall size of the Universal Service Fund ("USF"). An estimate of the amount of annual LSS at issue for all telecommunications carriers that might qualify should the Commission clarify the rules as requested in the petition is approximately \$11.7 million. This amount is less than 0.2 percent of the \$6.95 billion USF, and therefore granting the request for clarification would not have a perceptible impact on the overall Fund. However, on a company-specific basis, the additional support can make a tremendous difference in assisting small rural ILECs to deliver high-quality, affordable services to all of the consumers in their service areas.

In order to correct these inequities and to provide adequate support such that small rural ILECs can continue to provide quality service to their customers, the FCC should take prompt action to clarify or modify sections 36.125(j) and 54.301(a)(2)(ii) of its rules. This clarification or modification should permit small ILECs to receive support for local switching costs through LSS based upon their current number of access lines.

¹² See, *Federal-State Joint Board on Universal Service; Smithville Telephone Company, Inc., Petition for Waiver of Section 54.301 Local Switching Support Data Submission Reporting Date for an Average Schedule Company*, CC Docket No. 96-45, Order, 19 FCC Rcd 8891, 8893, ¶ 6 (2004).

¹³ 47 U.S.C. § 254.

¹⁴ Petition, p. 17.

Sincerely,

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

By: /s/ Stuart Polikoff
Stuart Polikoff
Director of Government Relations
21 Dupont Circle NW
Suite 700
Washington, DC 20036
(202) 659-5990

**NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.**

By: /s/ Richard A. Askoff
Richard A. Askoff
Its Attorney
80 South Jefferson Road
Whippany, New Jersey 07981
(973) 884-8000

**NATIONAL
TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION**

By: /s/ Daniel Mitchell
Daniel Mitchell
Its Attorney
4121 Wilson Boulevard
10th Floor, Arlington, VA 22203
(703) 351-2000

**WESTERN TELECOMMUNICATIONS
ALLIANCE**

By: /s/ Derrick B. Owens
Derrick B. Owens
Director of Government Affairs
317 Massachusetts Ave. NE
Suite 300
Washington, DC 20002
(202) 548-0202

**INDEPENDENT TELEPHONE &
TELECOMMUNICATIONS ALLIANCE**

By: /s/ Joshua Seidemann
Joshua Seidemann
Vice President, Regulatory Affairs
1101 Vermont Avenue NW, Suite 501
Washington, DC 20005
(202) 898-1520