Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

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), WESTERN TELECOMMUNICATIONS ALLIANCE (WTA)

The Commission has requested comment on the Coalition for Equity in Switching Support's petition for clarification of sections 36.125 and 54.301 of the Commission's rules.[1] The above-named Associations, representing rural incumbent local exchange carriers (ILECs) throughout the United States (collectively, the Associations)[2] urge the Commission to grant the relief requested by the Coalition without delay.[3]

---

[1] *Comment Sought on the Petition of the Coalition for Equity in Switching Support for Clarification of Sections 36.125 and 54.301 of the Commission's Rules Concerning Local Switching Universal Service Support*, WC Docket No. 05-337, Public Notice, DA 09-634 (rel. Mar. 19, 2009).

[2] NECA is a non-stock, non-profit association formed in 1983 pursuant to the Commission'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. NTCA represents more than 570 rural rate-of-return regulated telecommunications providers. OPASTCO is a national trade association representing over 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

I. BACKGROUND

Section 36.125 of the Commission's rules governs calculation of Dial Equipment Minute (DEM) weighting factors. This rule, as originally written, provided small companies (*i.e.*, those with 50,000 lines or less) a higher allocation of local switching costs to the interstate jurisdiction. The rule incorporates separate thresholds based on line size, with companies with fewer than 10,000 lines applying a DEM weighting factor of 3.0 to their switch cost allocations, those with lines between 10,001 and 20,000 applying a factor of 2.5, and those with lines between 20,001 and 50,000 applying a factor of 2.0. Effective in 1998, interstate costs associated with weighted DEM allocations began to be recovered via the Local Switching Support (LSS) Universal Service mechanism.[4]

The Commission modified sections 54.301 and 36.125 of the rules in 1997 and 2001 respectively, so as to assure that LSS payments and interstate allocations of local switching costs would be based on current line counts.[5] The rules require downward changes in DEM weights,

---

represents over 250 rural telecommunications companies operating in the 24 states west of the Mississippi River. Most members serve fewer than 3000 access lines overall and fewer than 500 access lines per exchange.

[3] *See also*, *e.g.*, Letter from Stuart Polikoff, OPATSCO, *et al*., to Marlene H. Dortch, FCC, CC Docket Nos. 80-286, 96-45 (Feb. 5, 2009), at 2; 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.

[4] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd. 8776 (1997) (*1997 Order*), Appendix I at 16-17.

[5] *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).

and corresponding LSS factors, as carrier access lines increase across specified line size thresholds. Section 54.301(a)(2)(ii) states:

> If the number of a study area's access lines increases such that, under § 36.125(f) of this chapter, the weighted interstate DEM factor for 1997 or any successive year would be reduced, that lower weighted interstate DEM factor shall be applied to the carrier's 1996 unweighted interstate DEM factor to derive a new local switching support factor.

And 36.125(j) states:

> If during the period from January 1, 1997, through June 30, 2006, the number of a study area's access lines increased or will increase such that, under § 36.125(f) the weighting factor would be reduced, that lower weighting factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor. The study area will restate its Category 3, Local Switching Equipment factor under § 36.125(f) and use that factor for the duration of the freeze period.

Unfortunately, while the rules require carriers with increases in access lines that result in the crossing of a DEM threshold to change their DEM weight to reflect increased line counts, they are silent with respect to carriers experiencing *decreases* in access lines. Thus, companies who would otherwise qualify for a higher DEM weight factor when their lines fall below a threshold, have been required to continue using a lower DEM weight factor normally applicable to larger companies. [6] This has resulted in these companies receiving less LSS than other companies with a comparable number of lines and comparable switching costs.[7]

---

[6] *See* Coalition for Equity in Switching Support Petition for Clarification, CC Docket Nos. 96-45 and 80-286 (Jan 8, 2009) (*Petition*), at 3-7. *See also* Mid-Communications d/b/a HickoryTech Request for Review of Universal Service Administrator Decision, WC Docket No. 05-337 (June 18, 2008). Mid-Com, a company with access line losses that brought it below the 10,000 line threshold, asserts in its request for review that USAC initially said in 2006 that Mid-Com could use the higher DEM weighting factor, but reversed course and began requiring Mid-Com two years later to use the lower DEM weighting factor. Mid-Com asks the Commission to revise

II. THE COALITION PETITION

On January 8, 2009, a group of small telephone companies adversely impacted by the "one way ratchet" effect described above filed the instant petition. These companies seek Commission clarification that "the weighting factor used to determine the appropriate level of LSS depends on the carrier's current number of access lines, regardless of whether the carrier's lines may have exceeded a threshold in the past." [8] According to petitioners, failure to issue the requested clarification will result in significant loss of LSS for small rural LECs that rely on this support to upgrade their networks and to continue to provide quality services to their customers at reasonable rates. Further, petitioners explain, the rule as currently interpreted is unfair to small LECs experiencing temporary increases in access lines that subsequently fall below a DEM weighting threshold because these companies' cost structures are not different in any relevant way from other LECs that have a similar number of access lines but are receiving full support.[9]

III. DISCUSSION

The Associations agree that the current interpretation of the rules is not consistent with the Universal Service goals of the Telecommunications Act of 1996 ("1996 Act"),[10] nor is it equitable for small ILECs who have experienced a threshold-crossing decrease in access lines to be denied USF support consistent with that received by other ILECs with similar characteristics.

USAC's decision regarding Mid-Com's LSS support and refund over $200,000 to Mid-Com for 2006. The Mid-Com request for review remains pending with the Commission.

[7] *See* Letter From John Logan, Counsel to the Coalition for Equity in Switching Support, to Marlene H. Dortch, FCC, WC Docket No. 05-337 (Apr. 10, 2009).

[8] *Petition* at 3.

[9] *Petition* at 5.

[10] 47 U.S.C.A. § 254.

Small 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.[11]

LSS was established to allow small ILECs to make necessary upgrades to their switching equipment and provide affordable, quality service to their customers.[12] The importance of this support has been acknowledged by the Commission, which has found that the absence of LSS could produce a hardship for customers in areas served by small ILECs.[13] The Commission has also noted that without LSS, a small carrier may not have the ability to provide and maintain quality service at just, reasonable and affordable rates.[14]

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 hardship on small rural ILECs and eliminate the inequities in LSS between similarly-situated companies, the Commission should promptly issue the clarification requested by the Coalition.

---

[11] *1997 Order* at ¶ 291.

[12] *Id.* at ¶¶ 303-304; Appendix I.

[13] *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 (2006) at ¶ 8.

[14] *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 (2004) at ¶ 6.

The Associations agree the best application of the rules concludes that 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.[15] Alternatively, the Commission could, as proposed in the Petition,[16] 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 to rely on current line counts will not have a significant impact on the overall size of the Universal Service Fund ("USF"). The Coalition estimates that the amount of annual LSS at issue for all telecommunications carriers that might qualify should the Commission clarify the rules as requested is approximately $11.7 million.[17] This amount is less than 0.2 percent of the overall USF. [18] Granting the request for clarification would thus have no significant impact on the overall USF size. However, on a company-specific basis, the

[15] *Petition* at 16.

[16] *Id.* at 17.

[17] *Id.* at 3, n. 6.

[18] *Id.*

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.

April 20, 2009

Respectfully submitted,

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.
By: /s/ Robert J. Deegan
Robert J. Deegan
Richard A. Askoff
Its Attorneys
80 South Jefferson Road
Whippany, NJ 07981
(973) 884-8000

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
By: /s/ Daniel Mitchell
Daniel Mitchell
Karlen Reed
Regulatory Counsel
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

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

EASTERN RURAL TELECOM ASSOCIATION
By: /s/ Jerry Weikle
Jerry Weikle
Regulatory Consultant
5910 Clyde Rhyne Drive
Sanford, NC 27330
(919) 708-7404

WESTERN TELECOMMUNICATIONS ALLIANCE
By: /s/ Derrick Owens
Derrick Owens
Director of Government Affairs
317 Massachusetts Ave. N.E.,
Suite 300 C
Washington, DC 20002
(202) 548-0202

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 20th day of April, 2009 by electronic filing and email to the persons listed below.

By: /s/ Elizabeth R. Newson
Elizabeth R. Newson

The following parties were served:

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

Gary Seigel
TAPD
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC. 20554
Gary.Seigel@fcc.gov

Antoinette Stevens
TAPD
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC. 20554
Antoinette.Stevens@fcc.gov

Best Copy and Printing, Inc.
Room CY-B402
445 12th Street, SW
Washington, DC 20554
fcc@bcpi.web