

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Request for Review by	)	WC Docket No. 05-337
Mid-Communications, Inc. dba	)	DA 08-1839
HickoryTech of Decision by Universal	)	
Service Administrator	)	

**NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION  
REPLY COMMENTS**

The National Telecommunications Cooperative Association (NTCA),<sup>1</sup> files these reply comments in support of Mid-Communications, Inc. dba HickoryTech’s (“Mid-Com”) petition pursuant to 47 C.F.R. § 54.719(c) seeking reversal of an action taken by the Universal Service Administrative Company (“USAC”).<sup>2</sup>

Mid-Com, a Minnesota-based NTCA associate member company, serves 11 exchanges in the northeast portion of the state. They receive universal service support, including local switching support (“LSS”). Beginning in 2006, when Mid-Com's line count first fell below 10,000 lines, they calculated their LSS support utilizing the “less than 10,000 lines” DEM (dial equipment minutes) weighting factor, which resulted in their receiving additional support. Mid-Com calculated its level of LSS support in this manner until the 1st quarter of 2008.

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<sup>1</sup> NTCA is the premier industry association representing rural telecommunications providers, established in 1954 by eight rural telephone companies. All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, 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 (Act).

<sup>2</sup> *In the Matter of Request for Review by Mid-Communications, Inc. dba HickoryTech of Decision by Universal Service Administrator, Mid-Communications, Inc. dba HickoryTech Request for Review of Universal Service Administrator Decision*, CC Docket No. 96-45, CC Docket No. 97-21, June 16, 2008 (“Mid-Com Request”).

After performing 2006 and 2007 true-ups, USAC informed Mid-Com that it must continue to use the DEM weighting factor for companies with more than 10,000 lines. USAC required Mid-Com to relinquish \$207,324 for 2006, and Mid-Com anticipates a 2007 true-up of \$248,709. Mid-Com is asking the FCC to direct USAC to refund the \$207,324 and to void the anticipated 2007 true-up.

**I. THE COMMISSION SHOULD MODIFY THE ONE-WAY “RATCHETING” RULE FOR DEM WEIGHTING ALLOCATIONS.**

Mid-Com, like many carriers in the industry, has been experiencing a decrease in access lines. In April 2006, Mid-Com’s access line count dipped below 10,000 and has remained there ever since. Beginning in May of 2006, Mid-Com calculated their expected LSS support utilizing the weighted interstate DEM factor for those companies with fewer than 10,000 lines. The DEM weighting factor is inversely proportional to the number of lines served. Companies with between 20,001 and 50,000 lines per study area apply a weighting factor of 2.0, for those with between 10,001 and 20,000 lines the weighting factor is 2.5, and for the smallest companies (those with 10,000 or fewer lines per study area), the DEM weighting factor is 3.0.<sup>3</sup>

Section 54.301(a)(2)(ii) of the Commission’s rules states:

If the number of a study area’s access lines increases such that...the weighted interstate DEM factor for 1997 or any successive year would be reduced, that lower weighted interstate DEM factor should be applied...to derive a new local switching support factor.<sup>4</sup>

The rules do not, however, explicitly address the reverse situation—one in which a study area experiences a decrease in lines. This has resulted in considerable confusion, as USAC first informed Mid-Com in May of 2006 that the company was correct in using the less than 10,000

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<sup>3</sup> 47 C.F.R. §36.125(f).

<sup>4</sup> 47 C.F.R. §54.301(a)(2)(ii).

line DEM weighting factor,<sup>5</sup> then, two years later, reversing course and telling them that they were incorrect. The Commission should take action to clarify the rules.

At the time the rules were originally written, access line counts were generally steady or growing. In recent years, however, as a result of such factors as competition from wireless providers and the diminished need for second lines for Internet access, rural carriers as a group are experiencing a significant decline in access lines. NTCA and several other rural associations have previously addressed this issue in comments filed before the Commission in August of 2006.<sup>6</sup> As the Associations wrote:

In an era where wireline companies generally are experiencing reductions in access lines served, this “one way” ratcheting rule has the unintended effect of reducing COE Category 3 cost allocation amounts for companies that would otherwise qualify for a higher DEM weighting factor. The Commission should correct this anomaly by revising its rules to specify that weighting factors should be determined based on current line counts.<sup>7</sup>

In the same proceeding, John Staurulakis, Inc. (“JSI”) wrote:

Due to increased use of broadband and intermodal competition, some LECs may experience a decrease in access lines dropping them below a DEM weighting factor threshold....[T]hese LECs have been penalized by the application of this rule. JSI anticipates that many more companies will also be negatively affected as access lines decrease. To address this imbalance, JSI urges the FCC to rule that the change in DEM weighting apply to both increases and decreases in access lines when access lines cross a DEM weighting threshold (emphasis retained).<sup>8</sup>

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<sup>5</sup> E-mail exchange between Michael Spead, USAC and Jan Pykles, Mid-Com, May 22, 2006. (Attached as Exhibit 1 to Mid-Com Request.)

<sup>6</sup> *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Joint Comments of Independent Telephone and Telecommunications Alliance, National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Eastern Rural Telecom Association, filed August 22, 2006.

<sup>7</sup> *Id.*, p. 11.

<sup>8</sup> *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Comments of John Staurulakis, Inc., filed August 22, 2006, p. 9.

Rural companies rely on universal service funding to enable them to provide rural residents with telecommunications services comparable to those made available to non-rural inhabitants. Requiring carriers to utilize DEM weighting factors based upon the access line counts they had at one time is backward-looking, and disregards their present reality. Those who will ultimately suffer are rural customers.

NTCA urges the Commission to revisit the DEM weighting allocation rule, and to modify it such that it allows carriers losing access lines to shift to a larger DEM weighting factor.

## **II. USAC'S TRUE-UP OF MID-COM'S 2006 LSS SUPPORT TOOK PLACE OUTSIDE OF THE 15-MONTH WINDOW STIPULATED BY FCC RULES.**

Section 54.301(e)(2)(iv) of the Commission's rules states:

The Administrator shall adjust each carrier's local switching support payment by the difference calculated in paragraph (e)(2)(iii) of this section **no later than 15 months after the end of the calendar year for which historical data are submitted** (emphasis added).<sup>9</sup>

According to Mid-Com, they were first notified of the 2006 true-up via a NECA invoice dated May 5, 2008—more than sixteen months after the end of the 2006 calendar year, outside of the requisite 15-month window stipulated in § 54.301 of the Commission's rules.<sup>10</sup> Further, Mid-Com first received notice that the new methodology of calculating LSS would apply retroactively was later still—in a May 21, 2008 email from Michael Spead of USAC.<sup>11</sup>

The period of 15 months following the end of the 2006 calendar year ended on March 31, 2008. Mid-Com was not notified of USAC's true-up of the company's 2006 LSS support until five weeks beyond that date. NTCA urges the Commission to declare USAC's 2006 true-up as

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<sup>9</sup> 47 C.F.R. §54.301(e)(2)(iv).

<sup>10</sup> Mid-Com Request, p. 5.

<sup>11</sup> *Ibid.*

having been conducted outside of the permissible 15-month window, and to order USAC to return to Mid-Com the \$207,324 in LSS support due them.

### **III. CONCLUSION**

For the above-noted reasons, NTCA respectfully requests that the Commission modify the one-way “ratcheting” rule for DEM weighting allocations in order to allow those carriers who are losing access lines to adjust their DEM weighting factor, just as they are required to utilize a different weighting factor when experiencing line growth. After taking such actions, USAC’s true-ups of Mid-Com’s 2006 and 2007 LSS support would be unnecessary.

Regardless of the Commission's ultimate action or inaction regarding the DEM weighting allocations, NTCA requests that the Commission rule that USAC's true-up of Mid-Com's 2006 local switching support was conducted outside of the prescribed 15-month window, and that the \$207,324 in LSS Mid-Com relinquished be returned to the company.

Respectfully submitted,



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September 17, 2008

## CERTIFICATE OF SERVICE

I, Adrienne Rolls, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in WC Docket No. 05-337, DA 08-1839, was served on this 17th day of September 2008 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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