

expanded to the point where it now serves four exchanges covering approximately 196 square miles in south-central New Hampshire.

GST has been adversely affected by the current interpretation of these rules under which a carrier's LSS is determined based on the maximum number of lines it served in the past, not its current number of lines. GST experienced steady access line growth until July 2002 when it served 11,066 access lines. Since that time, like most ILECs, GST's access lines have declined steadily so that, as of December 31, 2008, it served 9,093 access lines. If the current interpretation of these rules remains in place, and the company is required to continue to apply the 2.5 DEM weighting factor applicable to carriers serving between 10,001 and 20,000 lines, GST estimates that it will receive approximately \$245,000 less in annual LSS than if it had never exceeded the 10,000-line threshold.

Due to the economic impact of this issue on GST's operations, GST previously addressed this issue in Reply Comments³ filed in response to the Commission's Order extending the separations freeze in 2006.⁴ In the instant Comments, GST will both reiterate the arguments it made at that time as well as support the positions expressed in the Coalition's Petition.

B. Background

The Commission first established the current DEM weighting methodology in 1987 and 1988, with a five-year phase-in period.⁵ Under these rules, a carrier's measured interstate DEM was weighted by a factor of 3.0 if the carrier had 10,000 or less access lines, a factor of 2.5 if the carrier had between 10,001 and 20,000

³ *Reply Comments of Granite State Telephone, Inc.*, CC Docket No. 80-286 (filed November 17, 2006).

⁴ *Jurisdictional Separations and Referral to the Federal-State Joint Board, Order and Further Notice of Proposed Rulemaking*, 21 FCC Rcd 5516 (2006) (*2006 Separations Freeze Extension Order*).

⁵ *MTS and WATS Market Structure, Amendments of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board*, CC Docket Nos. 78-72, 80-286 and 86-297, *Report and Order*, 2 FCC Rcd 2639 (1987) (*New Part 36 Order*). *MTS and WATS Market Structure, Amendment of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286 and 86-297, *Order on Reconsideration and Supplemental Notice of Proposed Rulemaking*, 3 FCC Rcd 5518 (1988) *Erratum*, 3 FCC Rcd 5413 (1988) (*1988 Order on Reconsideration*).

access lines and a factor of 2.0 between 20,001 and 50,000 access lines. In 1997, the Commission, in CC Docket No. 96-45⁶, established the LSS mechanism in the Universal Service Fund to replace the previous practice of collecting the interstate revenue requirements generated by DEM weighting through access charges. At that time, the Commission required that, when a carrier's access lines increased over one of the thresholds noted above, it would be required to apply the lower weighting factor appropriate for the number of access lines then served. Subsequently, in the 2001 Separations Freeze Order⁷, the Commission required that all separations factors be frozen except for DEM weighting in cases where a carrier's access lines increased beyond one of the thresholds.⁸ The Commission did not, however, address establishing a symmetrical provision that would allow a carrier whose access lines decreased below a threshold to increase its DEM weighting factor to the level appropriate for the number of access lines it then served. Finally, in 2006, the Commission extended the separations freeze until June 30, 2009⁹ but again did not consider the issue of whether a carrier's DEM weighting factor should be changed if its access lines fell below one of the thresholds.

C. Although Congressional intent in establishing explicit universal service support mechanisms is clear, the rationale for the asymmetrical application of DEM weighting is not.

The Telecommunications Act of 1996, in adding Section 254 to the Communications Act of 1934, required the Commission to make the universal service support that had previously been implicit in interstate access rates, such as DEM weighting, explicit. In so doing, it required that universal service support be made "specific, predictable and sufficient" to ensure that telecommunications services in high

⁶ Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776 (1997) (*Order*). Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, *Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72*, 13 FCC Rcd 5318 (1998) (*1998 Fourth Reconsideration Order*).

⁷ Jurisdictional Separations and Referral to the Federal-State Joint Board, CC Docket. No. 80-286, *Report and Order*, 16 FCC Rcd 11382 (2001) (*2001 Separations Freeze Order*).

⁸ See 47 C.F.R. 36.125(j).

⁹ *2006 Separations Freeze Extension Order*.

cost areas be reasonably comparable to those available in urban cost areas at reasonably comparable rates.¹⁰

Although the intent of Section 254 is clear, it is unclear how this asymmetrical or one-way ratcheting approach to the application of DEM weighting factors comports with Congressional intent. To the best of GST's knowledge, the Commission has never provided a rationale for this asymmetry in any of its orders in CC Docket Nos. 80-286 or 96-45. The closest the Commission has come to addressing this issue was in its 1998 Fourth Reconsideration Order in CC Docket No. 96-45 where the Commission stated, "We note that local switching support also may be affected by changes in the weighting factor resulting from the number of lines served by a carrier"¹¹, and then cites the parallel one-way ratcheting provision in the Part 54 rules.¹²

At the time these provisions were adopted, decreases in ILEC access lines had been virtually unheard of since the 1930s. As such, neither the Commission nor interested parties may have seen any need to construct a rule that accommodated decreases as well as increases in access lines served. Now, however, with the increased penetration of broadband services, decreases in access line counts have become the norm, rather than the exception, for most ILECs. Under these circumstances, it is increasingly unclear how the asymmetrical application of DEM weighting factors serves to further Congress' objectives in establishing explicit universal support mechanisms.

D. One-way ratcheting is also not consistent with the original rationale for the establishment for DEM Weighting and fails to treat similarly situated carriers the same.

DEM weighting was originally established in recognition of the fact that the local switching cost per customer for small carriers was considerably higher than that for larger carriers. This is due to a variety of factors including the lower discounts on switching equipment provided to smaller carriers, the unavailability of switches scaled to serve very

¹⁰ 47 U.S.C 254(b).

¹¹ 1998 *Fourth Reconsideration Order*, at paragraph 55.

¹² 47 C.F.R. § 54.301(a)(2)(ii).

small exchanges and the fact that certain components of switch costs, such as the central processor and mainframe, do not vary directly (i.e., are relatively fixed) in relation to the number of access lines served. The one-way ratcheting rule recognizes that these factors have relatively less impact as the number of access lines served increases but fails to reflect that these factors generally have a greater impact on per customer switching costs as a carrier's customer base decreases. In other words, it is the absolute number of lines served by a carrier that affect its switching costs per customer, not whether a carrier reached its current access line count through an increase or decrease in access lines.

If the Commission fails to eliminate this asymmetry, carriers that have experienced access line losses will be denied the ability to apply the DEM weighting factor established for carriers of their size simply because in the past they had exceeded the relevant threshold. As such, similarly situated carriers in terms of access lines served may now be required to apply different DEM weighting factors simply because in the past they were differently situated. GST believes this result is both inequitable and unintended.

D. The ambiguities created by 36.125(j) in the context of the separations freeze and its later extension clearly require clarification.

The Coalition Petition¹³ does an excellent job of laying out the ambiguities of 36.125(j), especially its applicability during the extension of the separations freeze from 2006 to 2009, and GST fully supports their analysis of and conclusions on these issues. As noted by the Coalition, the rule's failure to define the freeze period except with reference to June 30, 2006 and its silence on the treatment of carriers whose access lines cross one of the DEM weighting thresholds after that date creates ambiguities that can only be resolved by clarification or modification of the rule.

F. Conclusion

¹³ Op cit., *Petition*, pp 11-13.

In conclusion, GST urges the Commission to adopt the Coalition's recommendations and clarify that after June 30, 2006 each ILEC should receive LSS based on its current number of access lines. In the alternative, GST recommends that the Commission modify its rules in the manner suggested by the Coalition.¹⁴

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¹⁴ Op Cit, *Petition*, p. 17.