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

In the Matter of	)	
	)	
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
	)	
Petition For Clarification of Sections 36.125 and 54.301 of the Commission's Rules Concerning Local Switching Universal Support	)	WC Docket No. 05-337

COMMENTS OF JOHN STAURULAKIS, INC.

John Staurulakis, Inc. ("JSI") hereby files these comments in response to the invitation of the Federal Communications Commission ("FCC" or "Commission") to comment on the Petition for Clarification filed by the Coalition for Equity in Switching Support on January 8, 2009 ("Petition").[1] JSI supports the Petition and urges the Commission to expeditiously clarify or modify its rules to address an ambiguity in the rules pertaining to Dial Equipment Minutes of use ("DEM") factor.

JSI assists hundreds of independent local exchange carriers ("LECs") throughout the United States in the preparation and submission of jurisdictional cost studies and

[1] Petition for Clarification filed by Coalition for Equity in Switching Support; CC Docket Nos. 80-286 and 96-45, Jurisdictional Separations and Referral to the Federal-State Joint Board; Federal-State Joint Board on Universal Service (January 8, 2009). The members of the Coalition are 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 (hereinafter, the "Coalition").

Universal Service Fund data to the National Exchange Carrier Association ("NECA") in addition to offering regulatory, financial and business development services. In this role, JSI has seen first-hand the severe negative impact that the FCC's ambiguous rules pertaining to the DEM factor[2] have had on several LECs including some of the Coalition members and, has, over the last three years, advocated on behalf of these companies through filing comments and participating in *ex parte* meetings.[3] For the reasons stated herein, JSI urges the Commission to act expeditiously and clarify and/or modify its DEM rules to ensure that the amount of local switching support ("LSS") for which a LEC is eligible depends on the number of lines the LEC currently serves. This clarification and/or modification should apply to all LECs that have dropped below a DEM weighting factor threshold in the past or anticipate doing so in the future regardless of whether or not the LEC had previously exceeded a DEM weighting factor threshold.

I. Ambiguities in the FCC's DEM Rule Must Be Addressed

The DEM is a measure of switch usage. DEM is used to allocate local switching equipment costs between state and interstate jurisdictions using relative values or percentages. LECs with less than 50,000 access lines "weight" their DEM with a "weighting factor," thereby providing the LECs with a higher allocated cost basis for federal universal service LSS. There are several thresholds in the weighting depending on lines served. For example, the smallest companies, those less than 10,000 access lines served, receive a weighting factor of 3.0. Companies with 10,001 to 20,000 access lines

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[2] These rules are 47 C.F.R. §§ 36.125(j) and 54.301(a)(2)(ii) (hereinafter known as the "DEM Rules").

[3] *See, e.g.*, Letter from Douglas Meredith, Director – Economics & Policy, JSI, to Marlene H. Dortch, Secretary, FCC, *Ex Parte* Presentation in CC Docket No. 80-286, dated Mar. 30, 2006; Letter from Douglas Meredith, Director – Economics & Policy, JSI, to Marlene H. Dortch, Secretary, FCC, *Ex Parte* Presentation in CC Docket No. 80-286, dated Apr. 26, 2006.

served receive a factor of 2.5, and companies with 20,001 to 50,000 access lines served receive a factor of 2.0. As noted in the Petition, receipt of LSS is vital to small LECs to make necessary upgrades to their equipment and provide and maintain quality service at just, reasonable and affordable rates.[4]

As demonstrated in the Petition, the current DEM Rules are silent regarding allowing a LEC to move to a higher weighting factor if the LEC's access lines decrease to a level below a DEM weighting factor threshold. As the Commission is aware, most LECs are experiencing a decline in line counts due primarily to customers no longer needing second lines when the customers subscribe to the companies' DSL service offerings and to customers switching their service to wireless carriers.[5] The result of being unable to adjust for decreases in study area access lines is that these companies have had to forego a portion of LSS due to the fact that the weighted portion of the DEM is a primary driver in the calculation of LSS. Accordingly, LECs that have dropped below a DEM weighting factor threshold due to a decline in line counts have been penalized by not receiving the appropriate amount of settlements to which they are entitled.

II. No Additional Steps Are Required For Commission Action

Almost three years ago, the Commission sought comment on this very issue when it issued a Further Notice of Proposed Rulemaking in the context of extending the

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[4] Petition at 2.

[5] *See* Letter from John Kuykendall, Director – Regulatory Affairs, JSI, to Marlene H. Dortch, Secretary, FCC, *Ex Parte* Presentation in CC Docket No. 80-286, dated Apr. 20, 2007 (presentation of representatives of Granite State Telephone Company, Inc. and Roanoke & Botetourt Telephone Company regarding the impact of the ambiguity in the DEM Rules on their company operations).

Separations Freeze.[6] In response to the FNPRM, associations representing rural LECs, JSI and LEC commenters urged the Commission to address the ambiguities in the DEM Rules in an expeditious manner.[7] No comments were filed opposing this course of action. Accordingly, all procedures required by the Administrative Procedures Act regarding this matter have already been satisfied even prior to the filing of the Petition.

Since the close of the formal comment period in November 2006, however, the Commission has yet to act. This could be due in part to concerns by the Wireline Competition Bureau regarding the impact that a clarification or modification to the DEM Rules would have on the universal service fund (the "Fund").[8] In the Petition, these concerns have been addressed by data provided by the Coalition which shows that clarifying or modifying the DEM Rules will not have a significant impact on the overall size of the Fund. This data shows that an estimate of the amount of annual LSS at issue for all telecommunications carriers that might qualify should the Commission clarify or modify the rule as requested in the Petition is approximately $11.7 million.[9] The Petition then demonstrates that this amount is less than 0.2% of the $6.95 billion fund and

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[6] *See Jurisdictional Separations and Referral to the Federal-State Joint Board*, Docket No. 80-286, FCC 06-70, Order and Further Notice of Proposed Rulemaking (rel. May 16, 2006) ("FNPRM").

[7] *See, e.g.* Comments of JSI, filed Aug. 22, 2006 in CC Docket No. 80-286, Jurisdictional Separations and Referral to the Federal-State Joint Board; Comments and Reply Comments filed jointly by 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, filed August 22, 2006 in CC Docket No. 80-286, Jurisdictional Separations and Referral to the Federal-State Joint Board; Reply Comments of Granite State Telephone, Inc., filed Nov. 17, 2006 in CC Docket No. 80-286, Jurisdictional Separations and Referral to the Federal-State Joint Board; Reply Comments of Rock Hill Telephone Company d/b/a Comporium Communications, Lancaster Telephone Company d/b/a Comporium Communications, and Fort Mill Telephone Company d/b/a Comporium Communications, filed Nov. 20, 2006 in CC Docket No. 80-286, Jurisdictional Separations and Referral to the Federal-State Joint Board.

[8] *See* Letter from John Kuykendall, Director – Regulatory Affairs, JSI, to Marlene H. Dortch, Secretary, FCC, *Ex Parte* Presentation in CC Docket No. 80-286, dated Oct. 17, 2007.

[9] Petition at 3, n.6.

therefore granting the request for clarification would not have a perceptible impact on the overall Universal Service Fund.[10] Accordingly, the concerns raised by the Bureau representatives have been addressed by the Petition and the Commission should be able to act expeditiously to address this matter.

III. Conclusion

The Petition demonstrates that due to the ambiguities in the DEM Rules, members of the Coalition and other similarly-situated LECs that have dropped below a DEM weighting factor threshold due to a decline in line counts have been penalized by not receiving the appropriate amount of settlements to which they are entitled. Because the line counts continue to decline, the number of LECs impacted by the ambiguities in the rules has increased over the three years that this matter has been pending at the FCC. Accordingly, the Commission should take prompt action to clarify or modify sections 36.125 and 54.301 of the FCC's rules to permit small incumbent LECs to receive support for local switching costs through LSS based upon their current number of access lines, regardless of whether the carrier's lines exceeded a threshold number in the past.

Respectfully submitted,

April 20, 2009

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[10] *Id.*