

**STATE MEMBERS  
FEDERAL STATE JOINT BOARD ON SEPARATIONS  
1101 VERMONT AVENUE, NW SUITE 200  
WASHINGTON, D.C. 20005**

May 12, 2009

Honorable Michael J. Copps, Chairman  
Honorable Jonathan S. Adelstein, Commissioner  
Honorable M. McDowell, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Ex Parte Filing**

*In the Matters of*

*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, DA 09-634, WC Docket No. 05-337<sup>1</sup>*

*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,*

Chairman Copps and Commissioners Adelstein and McDowell:

We are writing to you as State Members of the Federal-State Joint Board on Jurisdictional Separations (State Members). The Honorable Thomas W. Pugh of the Minnesota Public Utilities Commission has been nominated to the Joint Board and is joining us in this letter. We offer our support for the Petition for Clarification (Petition) filed by the Coalition for Equity in Switching Support (Coalition), on January 8, 2009.<sup>2</sup>

The Petition seeks clarification from the Federal Communications Commission (FCC) that 47 C.F.R 36.125 (jurisdictional separations) and 47 C.F.R 54.301 (universal service) provide that the amount of local switching support for which a carrier is eligible depends on the number of access lines a carrier serves, regardless of whether the carrier had a greater number of access lines at some point in the past.

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<sup>1</sup> The full text of the March 19, 2009 released public notice (DA-09-634) is available at: <[http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DA-09-634A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-634A1.doc)>

<sup>2</sup> Coalition for Equity in Switching Support, Petition for Clarification, CC Docket Nos. 80-286, 96-45 (filed Jan. 8, 2009) (Petition); 47 C.F.R §§ 36.125(j), 54.301(a)(2)(ii). The members of the Coalition for Equity in Switching Support include: 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. See Petition at 1. Petition is available online at: <[http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native\\_or\\_pdf=pdf&id\\_document=6520192906](http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520192906)>

The State Members recommend that the FCC clarify that the weighting factors identified in 47 C.F.R. 36.125(f) should be applied based on the number of access lines in service in a study area, and not on whether the carrier may have at one time in the past had a greater (or lesser) number of lines.

Further, the FCC should clarify that *on a going forward basis*, 47 C.F.R. 36.125(j) does *not* prevent an increase in weighting factor in light of decreased access lines in a study area during the duration of the separations freeze. We recommend that any consideration to apply this clarification retroactively be referred to the Universal Service Joint Board due to the potential impact on universal service funding and questions regarding the use and need for retroactive local switching support payments.

We further suggest that as the FCC considers regulation changes to implement the one year freeze extension, it also consider changing Section 47 CFR 36.125(j) to remove the existing ambiguity.

We believe these clarifications are reasonable and appropriate. First, for purposes of jurisdictional separations, a carrier's current circumstances are more relevant than how its lines might have changed over time. Second, clarification will ensure that otherwise identical carriers with the same number of lines are treated similarly under the separations rules. Last, it was not clear to us why 47 C.F.R. 36.125(j) only considered access line increases, but not line decreases, unless it was based on an incorrect assumption that lines would continue to increase over time as occurred in the past. The ambiguity under 47 C.F.R. 36.125(j) as to its treatment of decreased access lines further supports the concept that a carrier's weighting factor should be governed by 47 C.F.R. 36.125(f) based on its current lines.

We are available to further assist on this matter, including through future conference calls, if that is your desire. If you have any questions about this *ex parte*, please do not hesitate to contact any of the undersigned.

Sincerely,

Steve Kolbeck,  
State Chair of Federal-State Joint Board and  
Vice Chair, South Dakota Public Utilities Commission

John Burke  
State Member, Vermont Public Service Board

Anthony Palermino  
State Member, Connecticut Department of Public Utility Control

Thomas W. Pugh  
NARUC Nominee to Board, Minnesota Public Utilities Commission

cc: Scott Deutchman  
Mark Stone  
Nick Alexander  
Julie Veech  
Gary Seigel