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Before the
Federal Communications Commission
Washington, D.C. 20554

MAILED
OCT 15 2009
FCC Mail Room

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Coalition for Equity in Switching Support Petition for Clarification	)	
	)	
	)	

ORDER AND NOTICE OF PROPOSED RULEMAKING

Adopted: October 2, 2009 **Released: October 9, 2009**

Comment Date: (14 days after date of publication in the Federal Register)
Reply Comment Date: (21 days after date of publication in the Federal Register)

By the Commission: Commissioner McDowell concurring and issuing a statement; Commissioner Baker issuing a statement.

I. INTRODUCTION

1. In this order and notice of proposed rulemaking, we address the effect of line loss on universal service Local Switching Support (LSS) received by incumbent local exchange carriers (LECs) that are designated as eligible telecommunications carriers (ETCs).[1] Pursuant to the LSS mechanism, an incumbent LEC ETC serving 50,000 or fewer lines in a study area may recover a portion of its switching costs from the universal service fund.[2] Under the Commission's rules, as an incumbent LEC ETC's access lines increase above certain thresholds, the amount of LSS it may receive decreases.[3] In the order portion of this item, we deny the Coalition for Equity in Switching Support's (Coalition's) petition seeking clarification that the Commission's rules also allow an incumbent LEC ETC's LSS to increase if the carrier's access lines decrease below those thresholds.[4] As described below, we find no basis in the rules or the record of the Commission's proceedings to support the clarification the Coalition seeks. In the notice of proposed rulemaking portion of this item, however, we tentatively conclude that the LSS rules should be modified to permit incumbent LEC ETCs that lose lines to increase their LSS, and we seek comment on these proposed rule changes.

II. BACKGROUND

2. Pursuant to the Commission's jurisdictional separations rules,[5] incumbent LECs apportion their switching costs to the interstate jurisdiction based on the ratio of interstate dial equipment

[1] A carrier must be designated as an ETC to receive federal universal service high-cost support, including LSS. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201.

[2] 47 C.F.R. § 54.301.

[3] 47 C.F.R. §§ 36.125, 54.301.

[4] Coalition for Equity in Switching Support Petition for Clarification, CC Docket Nos. 80-286 and 96-45 (filed Jan. 8, 2009) (Coalition Petition).

[5] *See* 47 C.F.R. §§ 36.1 *et seq.*

minutes of use (DEM) to total DEM.[6] The incumbent LECs then recover their interstate switching costs through interstate tariffs, and recover the remaining intrastate switching costs as provided by the relevant state ratemaking authority. Incumbent LECs serving 50,000 access lines or fewer are permitted to allocate a higher portion of their switching costs to the interstate jurisdiction.[7] The precise amount of the extra allocation depends on a weighting factor determined by the number of access lines served by the incumbent LEC, with key thresholds established at 10,000, 20,000, and 50,000 lines.[8] A smaller DEM weighting factor allowed fewer switching costs to be recovered through interstate access charges and a larger DEM weighting factor allowed more switching costs to be recovered through interstate access charges. Prior to 1998, the costs allocated to the interstate jurisdiction, including the higher portion allocated pursuant to DEM weighting, were recovered through interstate access charges.

3. In the *Universal Service First Report and Order*, the Commission determined that recovering switching costs allocated based on the weighted DEM factor through interstate access charges constituted an implicit support mechanism disfavored by Congress when it adopted the Telecommunications Act of 1996 (the Act).[9] Accordingly, the Commission created LSS, which explicitly supports the additional switching costs allocated to the interstate jurisdiction through the universal service fund.[10] LSS retained DEM weighting as the method of calculating switching support with minor modifications.[11] Specifically relevant to the discussion below, the Commission adopted the rule, now codified in nearly identical language at both section 36.125(j) (governing the allocation of switching costs) and section 54.301 (LSS), that "if . . . the number of a study area's access lines increased or will increase such that . . . 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."[12] Under this rule section, if an incumbent LEC ETC's access lines exceeded the relevant threshold, the DEM weighting factor would decrease and this would also decrease the amount of LSS received by the incumbent LEC ETC.

4. In the 2001 *Separations Freeze Order*, the Commission froze the jurisdictional allocation factors used by incumbent LECs, while it considered comprehensive jurisdictional separations reform.[13] It codified the extension by adding effective dates, ending June 30, 2006, to each of the relevant rules.[14] In 2006, the Commission adopted the *Separations Freeze Extension Order*, extending the effective date of

[6] 47 C.F.R. § 36.125(f).

[7] 47 C.F.R. § 36.125(f), (j).

[8] *See* 47 C.F.R. § 36.125(f).

[9] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act). The 1996 Act amended the Communications Act of 1934. 47 U.S.C. §§ 151, *et seq.* (Communications Act or Act). *See also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8941 n. 777 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

[10] *Universal Service First Report and Order*, 12 FCC Rcd at 8940-41 paras. 303-04.

[11] *Id.*; *see also* 47 C.F.R. § 54.301.

[12] 47 C.F.R. § 36.125(j); *see also* 47 C.F.R. § 54.301(a)(2)(ii). The Commission adopted section 54.301(a)(2)(ii) in the *Universal Service First Report and Order* and adopted section 36.125(j) in the 2001 *Separations Freeze Order*. *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382, 11420, App. C (2001) (*Separations Freeze Order*). Although section 36.125(j) was adopted in 2001, like section 54.301(a)(2)(ii), it was made effective January 1, 1998.

[13] *Separations Freeze Order*, 16 FCC Rcd at 11387-91, paras. 9-14.

[14] *Id.* at 11417-30, App. C. As noted above at footnote 12, the Commission also codified section 36.125(j) in the *Separations Freeze Order*.

the freeze to June 30, 2009, or upon completion of comprehensive jurisdictional separations reform, whichever occurred earlier.[15] Recently, the Commission adopted an order extending the freeze again, to June 30, 2010.[16]

5. Coalition for Equity in Switching Support Petition. The Coalition contends that there is no clear evidence of the Commission's intent to create a "one-way rule" that would limit the amount of LSS available to an incumbent LEC ETC if its number of access lines increased, but would not correspondingly increase its amount of LSS if its access lines decreased, and that the rules themselves are silent on the treatment of carriers that experience declining line counts.[17] The Coalition argues that its proposed clarification, or in the alternative, an amendment to the Commission's rules, is necessary to provide incumbent LEC ETCs the level of support consistent with the rationale for LSS, thereby avoiding hardship to those carriers and inconsistent treatment of those carriers as compared to other carriers of similar size.[18] Citing the *Universal Service First Report and Order*, the Coalition argues that the Commission has recognized that "rural carriers generally serve fewer subscribers, serve more sparsely populated areas, and do not generally benefit [as much] from economies of scale and scope."[19] The Coalition maintains that the one-way rule prevents some small incumbent LEC ETCs from receiving the full amount of LSS intended by the Commission when it adopted the rule.[20]

6. The Coalition also asserts that the "best reading" of section 36.125(j) is that the one-way rule expired on June 30, 2006.[21] Specifically, the Coalition notes that, on its face, the rule adopted in the *2006 Separations Freeze Order* is effective "during the period . . . through June 30, 2006."[22] It asserts that the rule therefore "fails to provide guidance for carriers whose number of access lines decreases below a threshold after June 30, 2006."[23] It further asserts that because the Commission did not revise section 36.125 or specifically discuss LSS eligibility in the *2006 Separations Freeze Extension Order*, section 36.125 is ambiguous with respect to "what happens after June 30, 2006."[24] The Coalition argues that, given this ambiguity, the phrase "during the duration of the freeze period" in the final sentence of section 36.125(j) should not be read to include the extended freeze period, only the initial freeze period ending June 30, 2006, as that would be consistent with the date certain in the first sentence.[25]

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[15] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516, 5523-26, paras. 15-24 (2006) (*2006 Separations Freeze Extension Order*). The Commission did not codify the extension by modifying the text of the rules.

[16] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket 80-286, Report and Order, FCC 09-44 (rel. May 15, 2009) (*2009 Separations Freeze Extension Order*).

[17] Coalition Petition at 11-12. According to the Coalition, at the time the Commission adopted the LSS rules the incumbent LEC industry had not suffered widespread decline in numbers of access lines in more than 50 years, and the Commission likely did not consider the possibility of future declines. *Id.*

[18] Coalition Petition at 14-15.

[19] *Id.* (citing *Universal Service First Report and Order*, 12 FCC Rcd at 8934, para. 291).

[20] Coalition Petition at 15.

[21] *Id.* at 12-16.

[22] *Id.* at 12-13, 16.

[23] *Id.* at 13.

[24] *Id.* at 13.

[25] *Id.* at 13, 16.

III. ORDER

7. We deny the Coalition's petition seeking clarification that sections 36.125 and 54.301 of the Commission's rules allow an incumbent LEC ETC's DEM weighting factor and LSS to increase if the carrier's access lines decrease below the thresholds set out in the rules. We do not agree that the existing rules are ambiguous or otherwise provide a basis for the clarification the Coalition seeks.

8. We find that the Coalition's contention that section 36.125(j) did not apply after June 30, 2006, is not supported by the record in the Commission's proceedings. Prior to the adoption of the *2009 Separations Freeze Extension Order* the text of that section stated:

> 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.[26]

The Coalition argues that, given the specific date reference in the first sentence of the paragraph, the "duration of the freeze" should be read to refer only to the initial freeze period and not the extended freeze period.[27] It further notes that there is no specific discussion or reference to section 36.125 in the *Separations Freeze Extension Order.*[28]

9. The Coalition mistakenly believes that the June 30, 2006 date in the first sentence of section 36.125(j) is unaffected by the extended separations freeze. The Commission first codified the separations freeze by amending literally dozens of rules in Part 36 to read "through June 30, 2006."[29] When it later adopted the *2006 Separations Freeze Extension Order*, the Commission did not change the text of each affected rule.[30] However, although the Commission did not specifically reference section 36.125 or any other specific rule in the *2006 Separations Freeze Extension Order*, it expressly extended the entire freeze beyond June 30, 2006.[31] The extended freeze therefore applied to all affected Part 36 rules, including section 36.125. Accordingly, limiting the applicability of section 36.125(j) only to June 30, 2006, as the Coalition suggests, is inconsistent with the Commission's action in the *2006 Separations Freeze Extension Order.*[32]

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[26] 47 C.F.R. § 36.125(j) (2008).

[27] Coalition Petition at 12-13, 16.

[28] *Id.* at 13.

[29] *See Separations Freeze Order*, 16 FCC Rcd at 11417-30, App. C.

[30] *2006 Separations Freeze Extension Order*, 21 FCC Rcd at 5523-26, paras. 15-24.

[31] *Id.*

[32] *Id.* at 5526, para. 24 (stating the extended freeze would "be implemented as described in the *2001 Separations Freeze Order*"). Further, we recently adopted an order extending the separations freeze until June 30, 2010, for all rules frozen in the *2001 Freeze Extension Order*. *See 2009 Separations Freeze Extension Order* at paras. 11-14, App. B (codifying the extension so that all relevant rules, including section 36.125(j), now state that they are effective "through June 30, 2010").

10. Moreover, under the Coalition's interpretation of the freeze period's application to section 36.125, incumbent LEC ETCs would be subject to different DEM weighting factors for jurisdictional separations (under section 36.125) and LSS (under section 54.301). If the one-way rule ceased to apply to section 36.125(j), an incumbent LEC ETC might be able to shift additional switching costs to the interstate jurisdiction if its number of access lines decreased below a relevant threshold under the Part 36 separations rules, but the one-way rule in section 54.301(a)(2)(ii) would still apply and the carrier could not recover those additional switching costs from LSS under the Part 54 universal service rules. We find no evidence that the Commission intended such an anomaly.

11. Although the Coalition explicitly argues that the Commission should adopt the Coalition's interpretation of the June 30, 2006 limitation on section 36.125 discussed above, many of its arguments suggest that the Commission should instead clarify that the DEM weighting thresholds were always intended to apply to carriers with either increasing or decreasing numbers of access lines.[33] We find no evidence that the Commission intended its rules to be so construed, nor do we find that the rules contain any ambiguity that would permit such a clarification. The plain language of section 54.301(a)(2)(ii) refers only to increases in line counts, and is silent on decreases in line counts:

> If the number of a study area's access lines increases such that, under section 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.[34]

Similarly, in the *Universal Service First Report and Order*, the Commission is silent on decreases in line counts, concluding only that "[i]f the number of a carrier's lines increases during 1997 or any successive year, either through the purchase of exchanges or through other growth in lines, such that the current DEM weighting factor would be reduced, the carrier must apply the lower weighting factor to the 1996 unweighted interstate DEM factor in order to derive the local switching support factor used to calculate universal service support."[35]

12. The Coalition notes that the Commission likely did not consider a circumstance in which incumbent LECs suffered declining numbers of access lines, noting that "local exchange carriers' access lines had risen virtually without exception for over half a century."[36] Assuming, *arguendo*, that this is true, the fact that the Commission never considered such a circumstance would likely indicate that it never intended to adopt a specific rule to govern declining numbers in access lines. We do not find, in this case, that silence results in ambiguity, as the Coalition contends. We further do not find any basis for applying the rule in a manner that is manifestly contrary to the rule's express language.

IV. NOTICE OF PROPOSED RULEMAKING

13. The Coalition requests, in the alternative, that the Commission amend its rules to permit an incumbent LEC ETC with declining numbers of access lines to use a higher DEM weighting factor in performing jurisdictional separations and calculating LSS.[37] We believe that public policy supports doing

[33] *See* Coalition Petition, at 11-15.

[34] 47 C.F.R. § 54.301(a)(2)(ii). Section 36.125(j), which is quoted in whole above at paragraph 8, does not deviate from section 54.301(a)(2)(ii) in any material way. *See* 47 C.F.R. § 36.125(j).

[35] *Universal Service First Report and Order*, 12 FCC Rcd at 8941-42, para. 304.

[36] Coalition Petition at 11.

[37] *Id.* at 17.

so.[38] We therefore tentatively conclude that sections 36.125(j) and 54.301(a)(2)(ii) should be amended accordingly. We seek comment on this tentative conclusion, on the proposed rules attached in the appendix, and on the analysis below. We emphasize that this analysis applies only to our current consideration of a relatively minor change to an existing rule, and nothing herein is intended to reflect or prejudge our consideration of LSS as part of any comprehensive universal service reform.[39] In support of this request, the Coalition states that the one-way rule provides small incumbent LEC ETCs that suffer declining numbers of access lines with less LSS than they would be eligible to receive if their number of access lines had not exceeded the thresholds established in the rules. The Coalition states in addition that the calculation of LSS and the DEM weighting factors assume that small incumbent LEC ETCs have higher local switching costs than larger carriers. Thus, the Coalition asserts that if size is a driving factor behind high switching costs, then the fact that a carrier has gained and later lost access lines does not mitigate those high costs.

14. The Coalition has provided evidence that failing to provide the higher level of LSS has caused or threatens to cause small incumbent LEC ETCs some hardship.[40] Moreover, the Coalition asserts that a small carrier that gains, then loses, access lines is not in a meaningfully different situation than a similarly-sized small carrier that suffers no gain or loss.[41] Indeed, a carrier that purchases equipment designed to support a greater number of access lines but then loses those access lines may be even more disadvantaged than a carrier that had never made purchasing decisions based upon a higher access line count.

15. We therefore seek comment on amending our rules to allow an incumbent LEC ETC's DEM weighting factor and LSS to increase if the carrier's access lines decrease below the thresholds set out in the rules. We seek comment on the potential effect of such a change, and ask commenters to provide specific data regarding the amount by which such a change will increase universal service high-cost support disbursements, and an analysis as to why any such increase in the size of the universal service fund is justified.

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[38] *Id.* at 14-15.

[39] The Commission has pending several proceedings related to comprehensive reform of high-cost universal service support, including LSS. *See High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (*Identical Support Rule Notice*); *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (*Reverse Auctions Notice*); *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (*Joint Board Comprehensive Reform Notice*) (collectively, *High-Cost Support Reform NPRMs*). In addition, the Commission issued a further notice of proposed rulemaking seeking comment on comprehensive universal service and intercarrier compensation reform on November 5, 2008. *High Cost Universal Service Reform; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, CC Docket Nos. 96-45, 99-200, 96-98, 01-92, 99-68, WC Docket Nos. 05-337, 03-109, 06-122, 04-36, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262 (rel. Nov. 5, 2008) (*Comprehensive Reform FNPRM*).

[40] Coalition Petition at 3-7; Letter from John Logan, Counsel to the Coalition for Equity in Switching Support, to Marlene Dortch, Federal Communications Commission, WC Docket No. 05-337, CC Docket No. 80-286 (dated April 30, 2009).

[41] *Id.* at 14-15.

V. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

16. This notice of proposed rulemaking does not contain new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995.[42] In addition, therefore, it does not contain any new, modified, or proposed "information collection burden for small business concerns with fewer than 25 employees" pursuant to the Small Business Paperwork Relief Act of 2002.[43]

B. Initial Regulatory Flexibility Act Certification

17. The Regulatory Flexibility Act (RFA)[44] requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[45] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[46] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[47] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[48]

18. In this notice of proposed rulemaking we propose to revise two of the Commission's rules to permit small incumbent LECs whose access lines decrease below specific thresholds to receive LSS based on their current number of lines. The revisions do not increase the incumbent LECs' administrative burdens.

19. The Commission therefore certifies, pursuant to the RFA, that the proposals in this notice of proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. If commenters believe that the proposals discussed in the notice of proposed rulemaking require additional RFA analysis, they should include a discussion of these issues in their comments and additionally label them as RFA comments. The Commission will send a copy of the notice of proposed rulemaking, including a copy of this initial certification, to the Chief Counsel for Advocacy of the SBA. In addition, a copy of the notice of proposed rulemaking and this initial certification will be published in the Federal Register.[49]

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[42] Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

[43] Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729 (2002); 44 U.S.C. § 3506(c)(4).

[44] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[45] *See* 5 U.S.C. § 605(b).

[46] 5 U.S.C. § 601(6).

[47] 5 U.S.C § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[48] 15 U.S.C. §632.

[49] *See* 5 U.S.C. § 605(b).

C. *Ex Parte* Presentations

20. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[50] Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.[51] Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.[52]

D. Comment Filing Procedures

21. Pursuant to sections 1.415 and 1.419 of the Commission's rules,[53] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies.[54]

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments.
    - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
    - Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

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[50] 47 C.F.R. §§ 1.1200-1.1216.

[51] 47 C.F.R. § 1.1206(b)(2).

[52] 47 C.F.R. § 1.1206(b).

[53] 47 C.F.R. §§ 1.415, 1.419.

[54] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-115, Report and Order, 13 FCC Rcd 11322 (1998).

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

22. In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, SW, Room CY-B402, Washington, DC 20554; website: www.bcpiweb.com; phone: 1-800-378-3160. Furthermore, three copies of each pleading must be sent to Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-B521, Washington, DC 20554; e-mail: antoinette.stevens@fcc.gov.

23. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C., 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI through its website: www.bcpiweb.com, by e-mail at fcc@bcpiweb.com, by telephone at (202) 488-5300 or (800) 378-3160 (voice), (202) 488-5562 (tty), or by facsimile at (202) 488-5563.

24. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: (202) 418-0530 or TTY: (202) 418-0432.

25. For further information regarding this proceeding, contact Ted Burmeister, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7389, or theodore.burmeister@fcc.gov.

VI. ORDERING CLAUSES

26. Accordingly, it is ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-205, 214, 220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 214, 220, and 254, the petition for clarification filed by the Coalition for Equity in Switching Support IS DENIED as discussed herein.

27. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201-205, , 214, 220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-205, 214, 220, and 254, this notice of proposed rulemaking IS ADOPTED.

28. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this notice of proposed rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

29. IT IS FURTHER ORDERED that, pursuant to sections 1.103(a) and 1.4(b)(1) of the Commission's rules, 47 C.F.R. §§1.103(a) and 1.4(b)(1), this notice of proposed rulemaking SHALL BE EFFECTIVE upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX

Proposed Rules

PART 36 - JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 36 continues to read as follows:

AUTHORITY: 47 U.S.C. Secs. 151, 154(i) and (j), 205, 221(c), 254, 403, and 410.

Subpart B – Telecommunications Property

2. Amend Section 36.125 by revising paragraph (j) to read as follows:

(j) If the number of a study area's access lines increases or decreases such that, under section 36.125(f) of this part, the weighted interstate DEM factor for 1997 or any successive year would change, the weighted interstate DEM factor appropriate to the study area's current access line count shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor.

PART 54 – UNIVERSAL SERVICE

3. The authority citation for Part 54 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 201, 205, 214,

and 254 unless otherwise noted.

Subpart D – Universal Service Support for High-Cost Areas

4. Amend Section 54.301 by revising paragraph (a)(2)(ii) to read as follows:

(a)(2)(ii) If the number of a study area's access lines increases or decreases such that, under section 36.125(f) of this chapter, the weighted interstate DEM factor for 1997 or any successive year would change, the weighted interstate DEM factor appropriate to the study area's current access line count shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor.

CONCURRING STATEMENT OF COMMISSIONER ROBERT M. McDOWELL

In the Matter of High-Cost Universal Service Support; Coalition for Equity in Switching Support Petition for Clarification, WC Docket No. 05-337

I have consistently stated that, while the Universal Service system has been instrumental in keeping Americans connected and has improved their quality of life, the system is in dire need of comprehensive reform. And, as a general principle, a Universal Service system should not reward companies for losing customers to competitors. On the other hand, in the context of our existing rules, I understand the hardship concerns expressed by the petitioners. I hope that the resulting record will lead us to a fuller understanding of the ramifications of the rural carriers' request. Finally, as a procedural matter, I do have some concerns that this order has included specific tentative conclusions without sufficient justification on the record. For these reasons, I concur with this Notice of Proposed Rulemaking.

STATEMENT OF
COMMISSIONER MEREDITH A. BAKER

In the Matter of High-Cost Universal Service Support; Coalition for Equity in Switching Support Petition for Clarification, WC Docket No. 05-337

I recognize that, for now, we work within the universal service support mechanisms that we have. For that reason, I support this Notice of Proposed Rulemaking to consider whether to allow an incumbent local exchange carrier eligible telecommunications carrier's Local Switching Support (LSS) to increase if the carrier's access lines decrease below the thresholds set out in the rules. I look forward to reviewing the record on this discrete matter.

At the same time, I feel strongly that the Universal Service Fund is long overdue for a comprehensive overhaul, in light of significantly changed circumstances in the communications marketplace. My support for this item in no way prejudges my consideration of LSS, or any other matter related to high-cost support, in any comprehensive reform proposal that could come before me. I hope we will consider comprehensive reform, and I look forward to working with my Commission colleagues to develop a thoughtful, practical, and pragmatic universal service program that is appropriately tailored for the future of communications.