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December 18, 2009

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
12th Street Lobby, TW-A325
Washington D.C. 20554

Re: Ex Parte Notification: WC Docket No. 05-337

Dear Ms. Dortch:

The Coalition for Equity in Switching Support (“Coalition”) takes this opportunity to urge the Commission to expeditiously adopt its tentative conclusion to revise the local switching support (“LSS”) regulations as proposed in the recent Order and Notice of Proposed Rulemaking.¹

Rapid adoption of the revised rules would enable the affected companies to continue to provide affordable, quality telephone service to rural Americans consistent with the purposes of the universal service fund. Quick action would also have broader immediate and beneficial impacts on the consumers and communities served by these carriers. As the Coalition has repeatedly informed the Commission, the companies affected by this irrational rule have been forced to lay off significant portions of their workforce, institute hiring freezes and eliminate employee positions. In light of these circumstances, continued delay in adopting the *Notice’s* tentative conclusions would not only be irrational, but also would lead to additional lay offs and unemployment in geographic markets that have been particularly hard hit by the economic recession. The Coalition respectfully submits that the

¹ *High-Cost Universal Service Support; Coalition for Equity in Switching Support Petition for Clarification, WC Docket No. 05-337, Order and Notice of Proposed Rulemaking, FCC 09-89 (rel. Oct. 9, 2009) (“Notice”).*

Commission can no longer ignore this issue, especially during a time when the administration is desperately seeking viable opportunities to spur investment and employment across the country.

In adopting the *Notice's* tentative conclusions, the Commission should clarify that affected companies can apply the revised rules to all open reporting periods (*i.e.*, 2008 and 2009). The Coalition recognizes that in the Commission's separations proceeding, it requested that affected carriers be eligible for revised LSS assistance for all relevant reporting periods beginning July 1, 2006.² In response to concerns over application of the revised LSS rules to closed periods, however, the Coalition narrowed its request to include only reporting periods that remained open. The Coalition has reiterated this request in numerous filings and meetings with Commission staff.³

Application of the revised LSS rules for 2008 and 2009 is permissible because LSS payments for 2008 will not be finalized until the first quarter of 2010 and the payments for 2009 will not be finalized until the first quarter of 2011. The members of the Coalition have filed line estimates specified by the Universal Service Administrative Company with the FCC necessary to receive the full support sought in this proceeding, and many have already received some level of assistance payments for the 2008 and 2009 periods.

The Commission clearly has the authority to determine the final amount of LSS assistance that a carrier will receive after the new rules become effective while the LSS true up periods remain open to provide assistance to affected carriers based on 2008 and 2009 investment levels. As the Supreme Court has observed, "[a] statute is not rendered retroactive merely because the facts or requisites upon which its subsequent action depends, or some of them, are drawn from a time antecedent to the enactment."⁴

In addition, the very rule proposed in the *Notice* by the Commission could be construed as providing revised LSS assistance back to 1997. That rule reads that "[i]f 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

² See Coalition for Equity in Switching Support, Petition for Clarification, CC Docket Nos. 80-286 and 96-45 (filed Jan. 8, 2009); Coalition for Equity in Switching Support, Petition for Reconsideration, CC Docket No. 80-286 (filed June 22, 2009).

³ See *e.g.*, Coalition for Equity in Switching Support, Notice of Ex Parte, WC Docket No. 05-337, CC Docket No. 80-286 (filed Aug. 3, 2009); Coalition for Equity in Switching Support, Notice of Ex Parte, WC Docket No. 05-337, CC Docket No. 80-286 (filed Sept. 1, 2009); Comments of the Coalition for Equity in Switching Support, WC Docket No. 05-337 (filed Nov. 24, 2009); Reply Comments of the Coalition for Equity in Switching Support, WC Docket No. 05-337 (filed Dec. 1, 2009).

⁴ *Reynolds v. United States*, 292 U.S. 443, 449 (1934).

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to derive a new local switching support factor.”⁵ The Coalition reiterated in its comments that the Commission clarify in adopting the rule that this language is intended to apply to all open periods.

Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed electronically with your office. Should you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Antoinette C. Bush

Antoinette C. Bush

⁵ Notice at Appendix.