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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[WC Docket No. 05-337, CC Docket No. 80-286; FCC 10-44]

High-Cost Universal Service Support, Jurisdictional Separations, and Coalition for Equity in Switching Support Petition for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses an inequitable asymmetry in its current rules governing the receipt of universal service high-cost local switching support (LSS) by small incumbent local exchange carriers (LECs). Since the adoption of the current rules, incumbent LEC lines have begun to decrease, and, as a result of the one-way rule, many small LECs that have lost lines receive less support than other LECs with a similar number of lines that face nearly identical circumstances. By modifying the Commission's rules to permit incumbent LECs that lose lines to receive additional LSS when they cross a threshold, the Commission will provide LSS to all small LECs on the same basis. The Commission also dismisses the petition for reconsideration filed by the Coalition for Equity in Switching Support in the jurisdictional separations freeze proceeding.

DATES: Effective April 8, 2010.

FOR FURTHER INFORMATION CONTACT:

Theodore Burmeister, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in WC Docket No. 05-337 and CC Docket No. 80-286, FCC 10-44, adopted March 17, 2010, and released March 18, 2010. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800)

378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via the Internet at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

People with Disabilities: 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), 202-418-0432 (tty).

I. Introduction

1. In the Report and Order, we address an inequitable asymmetry in the Commission's current rules governing the receipt of universal service high-cost local switching support (LSS) by small incumbent local exchange carriers (LECs). Under the current rules, which were adopted by the Commission at a time when incumbent LEC lines had largely only increased over time, the amount of LSS that an incumbent LEC may receive decreases when its line counts increase above a particular threshold, but does not increase when its line counts decrease below that same threshold. Since the adoption of these rules, incumbent LEC lines have begun to decrease, and, as a result of the one-way rule, many small LECs that have lost lines receive less support than other LECs with a similar number of lines that face nearly identical circumstances. By modifying our rules to permit incumbent LECs that lose lines to receive additional LSS when they cross a threshold, we will provide LSS to all small LECs on the same basis. We emphasize that nothing in the Report and Order is intended to address the long-term role of LSS in the Commission's high-cost universal service policies, which we are considering as part of comprehensive universal service reform. We also dismiss the petition for reconsideration filed by the Coalition for Equity in Switching Support in the jurisdictional separations freeze proceeding. The issues raised in that petition are essentially the same as those raised in its petition for clarification. This decision and the *Coalition Petition Order and LSS NPRM* wholly address those issues, and therefore we dismiss the petition for reconsideration as moot.

II. Discussion

2. We conclude that our rules should be modified to permit an incumbent LEC's DEM weighting factor to increase as well as decrease when its line counts cross one of the thresholds provided in our rules. As described, we find that amending the rules will ensure that

similarly situated incumbent LECs will be treated similarly under our rules. Although this will increase the total amount of high-cost universal service support disbursed, we find that the increase will not have a significant effect on the overall size of the universal service fund. We emphasize that this relatively minor change to existing rules is not intended to reflect or prejudice our consideration of LSS as part of any comprehensive universal service reform.

3. Based on the record in this proceeding, we find no basis for continuing to provide different amounts of LSS to otherwise similarly situated incumbent LECs solely because one incumbent LEC had previously exceeded a threshold in our rules but the other had not. The LSS mechanism's existence and design are based on the relative inability of small incumbent LECs to achieve economies of scale in switching costs. A small incumbent LEC that has lost a significant number of lines, causing it to cross a DEM weighting threshold, suffers the same lack of economies of scale. We find that such a carrier should, by the logic underpinning the LSS mechanism, receive support in the same manner as a small incumbent LEC with a line count that never crossed a threshold. There is no evidence that the Commission, at the time it adopted the LSS rules, considered the possibility that small incumbent LECs would lose lines and the effect of line loss on LSS. Indeed, as the Coalition has noted, at that time incumbent LEC lines had grown, almost without exception, for more than 50 years.

4. The Coalition has provided evidence that failing to provide the higher level of LSS has caused or threatens to cause small incumbent LEC some hardship. Many affected carriers reportedly crossed above an access line threshold initially because their subscribers took second lines to access dial-up Internet service, and decreased below the threshold as the carriers deployed, and those same customers adopted, advanced services. We find that our current rules that reduce a carrier's LSS when line counts increase without a corresponding increase in LSS when line counts decrease have caused hardship for some small incumbent LEC and may affect the provision or affordability of service to customers.

5. We also find that amending our rules as proposed would not create undue growth in universal service support that would threaten the fund. The National Exchange Carrier Association (NECA), which collects cost and line count data for many of the carriers that could be affected by the

DEM weighting one-way rule, estimates that changing the one-way rule would increase LSS by approximately \$27 million per year. The Coalition estimates that the increase would be only \$19 million, based on support estimates for 2009. Using NECA's larger estimate would create an increase of approximately 0.3 percent to the total universal service fund, and about 0.6 percent to the high-cost portion of the fund. Although we do not take lightly any increase to the amount of universal service support disbursed, we find that this change will not have a significant impact on the overall size of the fund.

6. CTIA argues that the Commission should not adopt these rule changes because modern switching technology is less expensive and more scalable than traditional circuit switches. We do not take any position on the substance of these arguments, but note that, to the extent they apply, they apply broadly to the entire LSS mechanism and not merely to the rule changes we adopt here. For that reason, we find that CTIA's arguments would be better raised and addressed in a comprehensive universal service reform proceeding. CTIA also argues that the current record fails to address how the proposed change to LSS addresses the principle of affordability in section 254 of the Act. As discussed above, commenters have provided evidence that the rule changes will have minimal effect on the overall size of the universal service fund. Moreover, as stated above, there is record evidence indicating that the current rule has caused some carriers hardship and may impact the provision or affordability of service to customers. In addition, absent these rule changes, similarly situated incumbent LECs will continue to receive disparate amounts of LSS. Therefore, we find that adoption of the rule changes comports with the requirements of the Act that consumers in high-cost areas have access to reasonably comparable services at reasonably comparable rates to those available to consumers in other areas of the country.

7. We conclude that the rule changes we adopt in this report and order should be implemented for the full 2010 LSS funding year. Several parties ask that we make the rule changes effective for 2008 and 2009 because true-ups for those years have yet to occur. We decline to do so. Generally, rules adopted by administrative agencies may be applied prospectively only. The 2008 and 2009 funding years have ended. While it is true that 2008 and 2009 LSS true-ups have yet to be performed, that does not change the fact that the funding periods have passed, and thus, application of

the new methodology to those years would be improper retroactive rulemaking. The Coalition's argument that the Commission has made similar changes to future support based on data from earlier periods in the high-cost loop support mechanism is inapplicable in the LSS context. Under the high-cost loop support mechanism, support payments are made based on historical data. For example, 2010 high-cost loop support is calculated based on 2008 cost and loop data. Thus, a similar type of rule change to the high-cost loop support mechanism would necessarily incorporate past year data due to the different calculation and data method used. That is not the case with LSS, which uses projected data for the current funding period. Accordingly, we decline to apply these rule changes to prior LSS funding years. Consistent with comments made by CTIA, however, we modify our proposed rules to make the implementation period explicit in the text of the rules. Additionally, to ensure that ETCs receive disbursements for the current support year as soon as possible under the new rules, we find good cause for the Report and Order to be effective April 8, 2010. Similarly, we grant incumbent LECs that are affected by these rule changes a waiver of the October 1, 2009 deadline by which incumbent LECs must file their 2010 projected data with USAC pursuant to section 54.301(b) of the Commission's rules, and by which states must certify that affected ETCs' support will be used only for the provision, maintenance and upgrading of facilities and services for which the support is intended, if the certifications were not previously filed. Such incumbent LECs and states must file their projected data and certifications with USAC within 60 days of the effective date of this report and order.

8. Finally, we dismiss the Coalition's petition for reconsideration of the *2009 Separations Freeze Extension Order* as moot. Specifically, the Coalition asked the Commission to reconsider its decision not to modify the one-way rule when it extended the separations freeze to June 30, 2010. We find that the issues raised in the Coalition's separations reconsideration petition are essentially the same as those raised in its petition for clarification and are wholly addressed in the *Coalition Petition Order and LSS NPRM* and in this report and order.

III. Procedural Matters

A. Paperwork Reduction Analysis

9. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

B. Final Regulatory Flexibility Act Certification

10. The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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).

11. In this document, the Commission modifies its LSS rules. Pursuant to the "one-way rule," a small incumbent LEC receives less LSS when the number of access lines it served increased above certain thresholds, but does not receive more LSS when the number of access lines it served decreased below the same thresholds. In this document, the Commission changes its rules to provide LSS based on the incumbent LEC's current period line counts without regard for whether the LEC's lines had ever exceeded a line-count threshold. This rule change can only provide an incumbent LEC with more universal service support and the administrative burdens associated with complying with the Commission's rules will not change. Therefore, we certify that the requirements of this report and order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the report and order, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, this document and this certification will be sent to the Chief Counsel for Advocacy

of the Small Business Administration, and will be published in the **Federal Register**.

C. Congressional Review Act

12. The Commission will send a copy of the Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

List of Subjects

47 CFR Part 36

Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Rule Changes

- For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 36 and 54 as follows:

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

- 1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 205, 221(c), 254, 403, and 410 unless otherwise noted.

- 2. Section 36.125 is amended by revising paragraph (j) to read as follows:

§ 36.125 Local switching equipment—Category 3.

* * * * *

(j) If the number of a study area's access lines increases such that, under § 36.125(f), the weighted interstate DEM factor for 1997 or any successive year would be reduced, that lowered weighted interstate DEM factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor. If the number of a study area's access lines decreases or has decreased such that, under § 36.125(f), the weighted interstate DEM factor for 2010 or any successive year would be raised, that higher weighted interstate DEM

factor 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 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

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

§ 54.301 Local switching support.

(a) * * *

(2) * * *

(ii) If the number of a study area's access lines increases such that, under § 36.125(f) of this chapter, the weighted interstate DEM factor for 1997 or any successive year would be reduced, that lowered weighted interstate DEM factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor. If the number of a study area's access lines decreases or has decreased such that, under § 36.125(f) of this chapter, the weighted interstate DEM factor for 2010 or any successive year would be raised, that higher weighted interstate DEM factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor. If the number of a study area's access lines decreases or has decreased such that, under § 36.125(f) of this chapter, the weighted interstate DEM factor for 2010 or any successive year would be raised, that higher weighted interstate DEM factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor.

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[FR Doc. 2010-8010 Filed 4-7-10; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99-325; DA 10-208]

Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Media Bureau adopts changes in the digital audio broadcasting (DAB) rules to permit FM radio stations to voluntarily increase FM hybrid digital effective radiated power (ERP), and implements interference mitigation and remediation procedures to resolve promptly allegations of digital interference to authorized full-service FM analog stations resulting from an FM digital ERP increase undertaken pursuant to the procedures adopted.

The increase in FM hybrid digital ERP will allow an FM station's digital coverage area to more closely replicate its licensed analog coverage area, and the interference mitigation and remediation procedures will make certain that permissible increases in FM digital ERP do not adversely affect existing FM analog operations. These rule changes balance the immediate need for improved FM digital coverage with the continued need to limit interference from digital FM facilities to FM analog stations.

DATES: Effective May 10, 2010.

FOR FURTHER INFORMATION CONTACT:

Peter H. Doyle or Susan N. Crawford, Media Bureau, Federal Communications Commission, 202-418-2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Order* in MM Docket No. 99-325, adopted January 27, 2010, and released January 29, 2010.

Background and Related Documents

In the *First Report and Order* in MM Docket No. 99-325 (See 67 FR 78193, December 12, 2002), the Commission adopted rules permitting terrestrial radio stations to begin hybrid digital operations, i.e. the simultaneous transmission of analog and digital signals, using the in band-on channel (IBOC) DAB system developed by iBiquity Digital Corporation (iBiquity). As adopted, the IBOC DAB system permitted an FM station to operate with digital effective radiated power (ERP) equal to one percent (1%) of its analog ERP.

In 2007, after over four years of real-world hybrid digital operation by over 1,100 FM stations, it was apparent to both FM station licensees and the IBOC system developer that the coverage from an FM station's hybrid digital facilities was significantly less than the coverage from its analog facilities, and that this digital coverage shortfall was a direct result of the very low FM digital ERP permitted. Several FM station licensees and the IBOC system developer undertook an experimental field test program to determine the FM digital ERP required for hybrid digital coverage to replicate analog coverage. Based on their results, in June 2008, a group of FM stations licensees and FM transmission equipment manufacturers (Joint Parties) submitted a technical report of these studies prepared by iBiquity, and asked the Commission to increase maximum permissible FM digital ERP to ten percent (10%) of analog ERP for nearly all FM stations. The Joint Parties also requested that the Commission establish procedures to