on September 30, 2009, No. 645, effective October 1, 2009.

* * * * *

[FR Doc. 2010–7968 Filed 4–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0993; FRL–9134–8]

Approval and Promulgation of Implementation Plans; New Mexico; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New Mexico for the purpose of addressing the "good neighbor" provisions of the Clean Air Act (CAA) section 110(a)(2)(D)(i) for the 1997 ozone standards and the 1997 $PM_{2.5}$ standards. This SIP revision satisfies a portion of the State of New Mexico's obligation to submit a SIP revision that demonstrates that adequate provisions are in place to prohibit air emissions from adversely affecting another state's air quality through interstate transport. This rulemaking action is being taken under section 110 of the CAA and addresses one element of CAA section 110(a)(2)(D)(i), which pertains to prohibiting air pollutant emissions from within New Mexico from significantly contributing to nonattainment of the ozone and $PM_{2.5}$ NAAQS in any state.

DATES: This direct final rule will be effective June 7, 2010 without further notice unless EPA receives relevant adverse comments by May 10, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2007–0993, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.*
- Follow the online instructions for submitting comments.
- *EPA Region 6* "*Contact Us*" *Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD (Multimedia)" and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2007–0993. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The state submittal is also available for public inspection during official business hours, by appointment, at the New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

FOR FURTHER INFORMATION CONTACT: Emad Shahin, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6717; fax number (214) 665–7263; e-mail address *shahin.emad@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used, we mean the EPA.

Outline

I. What Action Is EPA Taking?

We are approving a submission from the State of New Mexico demonstrating that New Mexico has adequately addressed one of the required elements of the CAA section 110(a)(2)(D)(i), the element that prohibits air pollutant emissions from sources within a state from significantly contributing to nonattainment of the relevant NAAQS in any other state. We have determined that emissions from sources in New Mexico do not significantly contribute to nonattainment of the 1997 ozone standards or of the 1997 $PM_{2.5}$ standards in any other state. The remaining three

elements of section 110(a)(2)(D) are SIPs addressing: (i) Interference with the maintenance of the NAAQS in any other state; (ii) interference with measures required to prevent significant deterioration of air quality in any other state; and (iii) interference with measures required to protect visibility in any other state. The aforementioned 3 elements will be evaluated and addressed in future rulemakings.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on June 7, 2010 without further notice unless we receive adverse comment by May 10, 2010. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. What Is a SIP?

Section 110(a) of the CAA requires each state to develop a plan that provides for the implementation, maintenance, and enforcement of the national ambient air quality standards (NAAQS). EPA establishes NAAQS under section 109 of the CAA. Currently, the NAAQS address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

The plan developed by a state is referred to as the state implementation plan (SIP). The content of the SIP is specified in section 110 of the CAA, other provisions of the CAA, and applicable regulations. SIPs can be extensive, containing state regulations or other enforceable measures and various types of supporting information, such as emissions inventories, monitoring networks, and modeling demonstrations.

A primary purpose of the SIP is to provide the air pollution regulations, control strategies, and other means or techniques developed by the state to ensure that the ambient air within that state meets the NAAQS. However, another important aspect of the SIP is to ensure that emissions from within the state do not have certain prohibited impacts upon the ambient air in other states through interstate transport of pollutants. This SIP requirement is specified in section 110(a)(2)(D). Pursuant to that provision, each state's SIP must contain provisions adequate to prevent, among other things, emissions that significantly contribute to violations of the NAAQS in any other state.

States are required to update or revise SIPs under certain circumstances. One such circumstance is EPA's promulgation of a new or revised NAAQS. Each state must submit these revisions to EPA for approval and incorporation into the federally-enforceable SIP.

III. What Is the Background for This Action?

On July 18, 1997, EPA promulgated new standards for 8-hour ozone and fine particulate matter ($PM_{2.5}$). This action is being taken in response to the July 18, 1997 revision to the 8-hour ozone standards and $PM_{2.5}$ standards. This action does not address the requirements for the 2006 $PM_{2.5}$ standards or the 2008 8-hour ozone standards; those standards will be addressed in a later action.

Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within 3 years after promulgation of such standards, or within such shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that such new SIPs must address, as applicable, including section 110(a)(2)(D)(i) which pertains to interstate transport of certain emissions. On August 15, 2006, EPA issued its "Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards" ("Guidance") for SIP submissions that states should use to address the requirements of section 110(a)(2)(D)(i). EPA developed this guidance to make recommendations to states for making submissions to meet the requirements of section 110(a)(2)(D) for the 1997 8-hour ozone standards and 1997 $PM_{2.5}$ standards.

On September 17, 2007, we received a SIP revision from the State of New Mexico to address the requirements of section 110(a)(2)(D)(i) for both the 1997 8-hour ozone standards and 1997 $PM_{2.5}$ standards. This SIP submittal follows EPA's Guidance. As identified in the Guidance, the "good neighbor" provisions in section 110(a)(2)(D)(i) require each State to submit a SIP that prohibits emissions that adversely affect another state in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport; however, in this rulemaking EPA is addressing only the requirement that pertains to preventing sources in the state from emitting pollutants in amounts which will contribute significantly to nonattainment of the 1997 8-hour ozone standards and 1997 $PM_{2.5}$ standards in any other state. In its submission, the State of New Mexico indicated that its current SIP is adequate to prevent such significant contribution to nonattainment in any other state, and thus no additional emissions controls are necessary at this time to alleviate interstate transport.

IV. What Is EPA's Evaluation of the State's Submission?

In accordance with EPA's Guidance, the State of New Mexico has made a SIP submission addressing interstate transport for the 1997 8-hour ozone standards and 1997 $PM_{2.5}$ standards. The State has made a showing that emissions from New Mexico do not significantly contribute to violations of either NAAQS in other states by two different means. For $PM_{2.5}$ the State has relied primarily upon technical analysis performed by EPA in connection with another regional rulemaking that addresses interstate transport. For ozone, the State has relied primarily on additional modeling to address the extent of interstate transport. We believe that the submission adequately establishes that emissions from New Mexico do not significantly contribute to violations of either NAAQS in other states, for the reasons explained below.

To support a determination of no "significant contribution" for the 1997 $PM_{2.5}$ standards, the state has relied on EPA's Clean Air Interstate Rule (CAIR) [1] analysis. This approach is consistent with EPA's Guidance to states for this SIP submission. In CAIR, EPA evaluated which states significantly contribute to violations of the 1997 8-hour ozone standards and 1997 $PM_{2.5}$ standards in other states. Based upon its analysis, EPA did not include New Mexico in the CAIR region. In the CAIR preamble, EPA provided its rationale for the exclusion

[1] See, "Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule," 70 FR 25162 (May 12, 2005). Information regarding CAA section 110(a)(2)(D) SIPs can be found beginning of page 25263.

of the western states, including New Mexico, from further consideration of transport for 8-hour ozone and $PM_{2.5}$ and the requirements of CAIR.

The "Technical Support Document for the Interstate Air Quality Rule Air Quality Modeling Analysis", January 2004 (available at *http://www.epa.gov/cair/technical.html*) contains documentation of the modeling used to support CAIR. This modeling included an analysis of the maximum impact of emissions from States without CAIR controls applied on areas projected in $PM_{2.5}$ nonattainment in 2010. A maximum impact level of 0.15 μg/m^3 was considered significant for this analysis (**Note:** In the final CAIR EPA changed the maximum impact level for this significance test to 0.20 μg/m^3). EPA's modeling indicated that the maximum impact from emissions from sources in New Mexico on any projected nonattainment area in another state was 0.03 μg/m^3. This value is 20% of the significant impact level that EPA used in the CAIR proposal, and therefore EPA determined that emissions from the state of New Mexico do not significantly contribute to pollutant levels in any area projected to be nonattainment of the $PM_{2.5}$ standard in that analysis.

CAIR was remanded by the U.S. Court of Appeals for the District of Columbia, and EPA is currently in the process of developing a replacement rule to address interstate transport for the 1997 8-hour ozone and 1997 $PM_{2.5}$ standards. We do not believe that the CAIR remand affects New Mexico's reliance on EPA's CAIR analysis for the purpose of evaluating New Mexico's PM $_{2.5}$ impacts on other states. Specifically, EPA's modeling was conducted without including the impact of any CAIR controls, and thus the evaluation is not impacted by any uncertainty in the implementation of CAIR controls due to the remand. Also, despite remand of the CAIR rules, EPA's reliance on the maximum impact level of 0.20 μg/m^3 as the cutoff for the inclusion of a state in the CAIR region was upheld by the court. Therefore, with respect to the 1997 $PM_{2.5}$ standards, we believe that New Mexico's submission adequately establishes that sources in that state are not significantly contributing to violations of that NAAQS in any other state.

To support a determination of no "significant contribution" for the 8-hour ozone NAAQS, New Mexico could not rely upon EPA's CAIR analysis because western states including New Mexico were not included in the area modeled for ozone. Instead, New Mexico provided an additional modeling analysis of the impact of emissions from the state on projected 8-hour ozone nonattainment in downwind states. We note that modeling is not necessarily required to support this type of SIP submission, but this approach is consistent with EPA's Guidance to states for this SIP submission.

The modeling relied upon by the state is described in greater detail in its technical support document in the submission, and is available at *http://www.regulations.gov,* Docket No. EPA–R06–OAR–2007–0993. We note that EPA assisted the state with this analysis, including the development of the modeling demonstration. In order to develop a model scenario that could evaluate New Mexico's impacts, the state and EPA determined that it was appropriate to rely on data developed by the Central Regional Air Planning Association (CENRAP). Modeling was conducted using a 2002 third quarter CENRAP modeling dataset that included New Mexico in the modeling domain. While a more recent dataset might be assumed to be more appropriate to support this action, a 2010 dataset was not available from CENRAP. However, we believe that the use of the 2002 dataset is adequate to evaluate the degree of contribution of New Mexico emissions sources to violations of the 1997 8-hour ozone standards. Because the analysis is based on year 2002 emissions, we believe it is a conservative estimate of potential transport impacts in 2010, as New Mexico's emissions have been decreasing since 2002 due to various recent federal control programs (including On-Road and Nonroad reductions). This trend is confirmed by available 2005 inventory. In other words, if data from 2002 establish that there is no significant contribution to violations of the 1997 8-hour ozone standards in other states, then New Mexico sources would have even lower impacts currently and consequently no significant contribution.

In the Guidance, we recommended a number of ways that states might elect to evaluate whether or not there is significant contribution, and we suggested that states might consider assessing the potential for contribution using assumptions similar to those used by EPA in CAIR. The state's analysis considered three factors comparable to those used by EPA as screening criteria in determining significance for states in CAIR: (a) The magnitude of the contribution, (b) the frequency of the contribution, and (c) the relative amount of contribution. The additional modeling yielded consistent results showing New Mexico emissions do not contribute significantly to 8-hour ozone nonattainment in any of the areas analyzed. New Mexico's highest overall contribution to total nonattainment for any nonattainment area at the time of the modeling was for Dallas/Fort Worth. New Mexico's highest impact on the Dallas/Fort Worth area was a daily average contribution of 0.4%, with a contribution average of 0.4 ppb. By EPA's own metrics (as established in CAIR and upheld by the court), these impacts are considered to be small and infrequent and well below screening criteria established at 1% and 2 ppb, respectively. Moreover, not a single metric of the three contribution factors was found to be above the significance threshold established by EPA for any of the downwind counties. For more details please see the document titled "Modeling Data and Report for New Mexico from EPA Regions 6 and 7" that is included in the docket materials for this action.

At the time the modeling was performed, Denver's air quality was meeting the standard. (The 2004–2006 8-Hour Ozone Design Value (DV) was 81 ppb). Therefore the state did not evaluate New Mexico's ozone impacts on Denver. Denver had a very high ozone season in 2007 that temporarily pushed the area into nonattainment. The preliminary 2007–2009 DV (awaiting final data validation) is 82 ppb so the area appears to now be back in attainment. The preliminary 2007–2009 DV is based upon 4th High values of 90 ppb in 2007, 79 ppb in 2008, and 79 ppb in 2009 (preliminary). With the last two 4th Highs of 79 ppb, Denver would have to monitor a 4th High value of 97 ppb in 2010 to go back into nonattainment for the period 2008–2010. Denver has not had a 4th High value of more than 92 ppb in the last 15 years, so it is unlikely that Denver will be in nonattainment at the end of the 2010 ozone season for the 84 ppb standard. Since based on preliminary 2007–2009 data, Denver is attaining the standard, New Mexico's emissions should not be considered as contributing to nonattainment in Denver.

With respect to the 1997 8-hour ozone standards, we believe that New Mexico's submission adequately establishes that sources in that state are not significantly contributing to violations of that NAAQS in any other state. As noted previously, EPA will be acting on the other elements of Section 110(a)(2)(D)(i) in separate rulemakings.

V. Final Action

We are approving revisions to the New Mexico SIP which adequately demonstrates that air pollutant emissions from sources within New

Mexico do not add significantly to nonattainment of the relevant NAAQAS on any other state.

Based on the information provided by NMED in the technical demonstration, it has sufficiently been demonstrated that emissions from New Mexico do not significantly contribute to downwind nonattainment. Thus, EPA concludes that the New Mexico SIP complies with CAA section 110(a)(2)(D)(i)(I).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 7, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 30, 2010.

Al Armendariz,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—New Mexico

■ 2. The second table in § 52.1620(e) entitled "EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP" is amended by adding an entry to the end to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(e) * * *

EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Explanation
* * *	*	*	* *	
CAA 110(a)(2)(D)(i)(I) SIP—Interstate Transport.	New Mexico	09/17/07	04/08/10 [*insert FR page number where the document begins*].	

[FR Doc. 2010–7868 Filed 4–7–10; 8:45 am]
BILLING CODE 6560–50–P

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.bcpiweb.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 prejudge 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