

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Accounting and Separations Information from) OMB Control No. 3060-XXXX
Incumbent Local Exchange Carriers that)
Receive Interstate Access Revenues on a Cost)
Basis)

**COMMENTS OF
THE NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.,
THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES,
THE NATIONAL TELEPHONE COOPERATIVE ASSOCIATION,
THE UNITED STATES TELECOM ASSOCIATION, AND
THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

Pursuant to the Federal Communications Commission’s (Commission’s) March 10, 2005, Public Notice, the National Exchange Carrier Association, Inc. (“NECA”), the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), the National Telephone Cooperative Association (“NTCA”), the United States Telecom Association (“USTA”), and the Independent Telephone & Telecommunications Alliance (“ITTA”) (collectively, the “Associations”) hereby submit the following comments in the above-captioned proceeding.¹

¹ Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested, 70 Fed. Reg. 11971 (2005) (*Notice*).

The *Notice* seeks input on a one-time data collection intended to help the Commission and the Federal-State Joint Board on Separations determine whether to extend the separations freeze (currently set to expire on June 30, 2006), and if not, whether and how to modify the Commission's Part 36 jurisdictional separations rules relating to category relationships and jurisdictional cost allocation factors.² The *Notice* indicates that in the proposed data collection, carriers will be asked to identify and explain the manner in which specific categories of costs and revenues are recorded for accounting and jurisdictional purposes.³

The *Notice* specifically requests comments on a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; b) the accuracy of the Commission's burden estimate (Estimated Time per Response of 20 hours); c) ways to enhance the quality, utility, and clarity of the information collected; and d) ways to minimize the burden of the collection of information on the respondents.⁴

The Commission "froze" separations factors in 2001 in order to stabilize and simplify the separations process while it continued to work on more comprehensive separations reform.⁵ The May 2001 *Separations Freeze Order* stated that existing Part 36 separations rules were created prior to the widespread introduction of competition in the

² *Id.* at 11972.

³ *Id.*

⁴ *Id.*

⁵ Jurisdictional Separations and Referral to the Federal-State Joint Board, CC Docket No. 80-286, *Report and Order*, 16 FCC Rcd 11382 (2001). (*Separations Freeze Order*) The separations freeze has been in effect since June 2001.

local telecommunications marketplace and before new technologies and services, including the Internet, changed the telecommunications landscape and blurred the lines between interstate and intrastate services.⁶ The five-year freeze was expected to allow the Commission time to address several issues that result from the emergence of new technologies and local exchange service competition, including the appropriate separations treatment of unbundled network elements (UNEs), digital subscriber line (DSL) services, private lines, and Internet traffic.⁷

The *Notice* describes the proposed data collection in general terms, stating only that “carriers will be requested to identify and explain the way in which specific categories of costs and revenues are recorded for accounting and jurisdictional purposes.”⁸ Among other things, the data gathered in the collection is expected to allow the Commission and Joint Board to study the impact of Internet traffic and related growth in local minutes during the current freeze.⁹ No explanation is given, however, as to the specific categories of costs and revenues in which data will be required, or the level of accounting detail necessary.

For this reason, it is problematic for the Associations to provide meaningful comments on the proposed data collection. Without more information, for example, it is difficult to determine what types of studies or analyses will be necessary in order for the companies to comply with the eventual data request. Furthermore, it is difficult to

⁶ *Id.* at ¶ 1.

⁷ *Id.* at ¶ 31.

⁸ *Notice* at 11972.

⁹ *Id.*

respond to the central question of the *Notice*, i.e., whether the burden estimate for responding to the eventual data collection is accurate and whether there may be ways to enhance the quality, utility, and clarity of the information collected.

It appears, however, that the proposed data collection may request information that affected rural incumbent local exchange carriers (ILECs) will not be able to provide without expenditures of time and effort that far exceed the burden estimate contained in the Public Notice. This is due to the fact that rural ILECs have generally discontinued collecting the data and performing the traffic studies needed to develop jurisdictional cost allocation factors since the separations freeze was adopted in 2001.¹⁰ Many of the personnel familiar with these functions have subsequently moved into other positions or have retired. This has, for example, prevented NECA from being able to provide certain types of data related to separations in the years since the freeze was adopted.¹¹

If the Commission intends to seek data similar to the type that was collected prior to the separations freeze, it would most likely be quite costly and burdensome for most rural carriers to gear up to supply the necessary data and analyses. The 20 hours Estimated Time for Response set forth in the *Notice* may in that case be seriously underestimated.

¹⁰ Of course, as the Commission is aware, telephone companies that settle on the basis of the interstate average schedules would not be likely to have ever had a process to develop information on jurisdictional separations factors in any event.

¹¹ For example, NECA has been unable to provide the Commission with dial equipment minutes (DEM) data in its annual Monitoring Reports. *See* CC Docket No. 87-339, Letters from Richard A. Askoff, NECA, to Sharon Webber, TAPD (filed July 18, 2002 & Oct. 28, 2003).

Moreover, the Public Notice appears to indicate that there will be an effort to determine the effect of Internet traffic on separations factors.¹² Rural ILECs are generally unable, however, to distinguish between traffic that was originated from or destined to the Internet and other types of traffic, so such information may not be possible to supply.

For these reasons the Associations recommend that the Commission refrain from issuing the proposed data request. Alternatively, if the Commission elects to issue the proposed data request, it should clarify that companies need only supply data that is readily available. The Associations recognizes that the freeze was intended to operate on a temporary basis, pending reform of the Commission's separations rules. Since the freeze was adopted, several other critical proceedings have been undertaken by the Commission that could have a direct bearing on jurisdictional separations issues, including for example intercarrier compensation,¹³ universal service rules and policies,¹⁴

¹² *Notice* at 11972.

¹³ Developing a Unified Intercarrier Compensation Region, CC Docket No. 01-92, *Further Notice of Proposed Rulemaking*, 20 FCC Rcd 4685 (2005) (*ICC Further Notice*).

¹⁴ *See, e.g.*, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, CC Docket No. 92-237, NSD File No. L-00-72, Number Resource Optimization, CC Docket No. 99-200, and Telephone Number Portability, CC Docket No. 95-116, *Notice of Proposed Rulemaking*, 16 FCC Rcd 9892 (2001); *Further Notice of Proposed Rulemaking and Report and Order*, 17 FCC Rcd 3752 (2002); *Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952 (2002).

and the regulatory treatment of broadband and IP-enabled services offered by wireline telephone companies.¹⁵ All of these proceedings remain unresolved at this point, but could be expected to cause significant changes to the Commission's Part 36 rules when they are brought to conclusion.¹⁶

In light of these ongoing proceedings, the Commission and the Joint Board have clear justification for extending the separations freeze for an additional period of time without collecting further data.¹⁷ In fact, undertaking a complex, mandatory data collection now would likely be seen as futile since substantial reform of the Commission's intercarrier compensation and/or universal service rules would likely render moot any separations data collected at this point.

Conclusion

Without detailed information on the types of data to be collected, the Associations are unable to provide detailed comments on the proposed data collection. If, however, the Commission intends to seek data similar to the type that was collected prior to the separations freeze, or add requirements to distinguish "Internet" from "non-Internet"

¹⁵ See, e.g., IP-Enabled Services, WC Docket No. 04-36, *Notice of Proposed Rulemaking*, 19 FCC Rcd 4863 (2004); Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers, CC Docket No. 02-33, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements, CC Docket Nos. 95-20, 98-10, *Notice of Proposed Rulemaking*, 17 FCC Rcd 3019 (2002).

¹⁶ Indeed, depending on how the Commission and/or Congress resolves the jurisdictional issues associated with establishing a unified intercarrier compensation mechanism, as discussed in the Commission's *ICC Further Notice*, the fundamental basis of existing separations rules may well come into question. *ICC Further Notice* at ¶¶ 78-82.

¹⁷ In fact, the Commission anticipated that the freeze might need to be extended. *Separations Freeze Order* at ¶ 29.

traffic, rural ILECs may have substantial difficulty responding to the proposed data collection. Many of these carriers have discontinued collecting this type of data during the course of the separation freeze, and it would be quite costly and burdensome for them to gear up to collect and analyze this data even on a one-time basis. If so, the burdens associated with the proposed data collection will far exceed the Estimated Response Time of 20 hours set forth in the *Notice*.

Since the Commission established the separations freeze in 2001, a broad and complex variety of proceedings have been initiated that could collectively change the fundamental basis of existing separations rules. The Associations respectfully suggests that in light of the uncertainty created in this environment, the Commission and the Joint Board extend the current Part 36 separations freeze until such time as these proceedings are resolved. At that time, it may be possible for the Commission, the Joint Board and the industry to undertake studies of separations data under various scenarios and to make meaningful determinations with respect to the need for changes to the Commission's Part 36 separations rules.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Association's Comments was served this 9th day of May, 2005, by e-mail, to the person listed below.

By: /s/ Elizabeth R. Newson
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The following parties were served:

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