

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

<b>IN THE MATTER OF JURISDICTIONAL SEPARATIONS AND REFERRAL TO THE FEDERAL-STATE JOINT BOARD</b>	) ) ) )	<b>CC Docket No. 80-286</b>
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**REPLY COMMENTS OF THE  
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits reply comments in the above-captioned proceeding. ITTA is an alliance of mid-size telephone companies whose members collectively serve 30 million access lines in 44 states, and offer subscribers a broad range of high-quality wireline and wireless voice, data, Internet, and video services.

ITTA supports extension of the current freeze of Part 36 category relationships and jurisdictional cost allocation factors for a period of not less than one year following implementation of final Universal Service Fund (USF) and intercarrier compensation (ICC) reform. This approach will ensure that future modification of any separations requirements will be to complement, rather than complicate, the Commission's ongoing efforts to ensure that regulatory frameworks reflect current competitive market conditions.

## II. THE SEPARATIONS FREEZE SHOULD EXTEND FOR NO LESS THAN ONE YEAR FOLLOWING IMPLEMENTATION OF USF/ICC REFORM

The Commission proposed in a Notice of Proposed Rulemaking<sup>1</sup> to extend the current separations freeze for one year, until June 30, 2010. The Commission reasoned that removal of the freeze could impose “undue administrative burdens on incumbent LECs.”<sup>2</sup> The Commission explained,

Incumbent LECs have not been required to utilize the programs and expertise necessary to prepare separations information since the inception of the freeze almost eight years ago. If the Commission does not extend the separations freeze, and instead allows the earlier separations rules to return to force, incumbent LECs would be required to reinstitute their separations processes, and they may no longer have the necessary employees and systems in place to do so. Given the imminent expiration of the current separations freeze, it is unlikely that incumbent LECs would have sufficient time to reinstitute the separations processes necessary to comply with the earlier separations rules.<sup>3</sup>

Tellingly, none of the many parties filing comments -- including carriers, associations, and public sector entities -- opposed extension of the freeze for at least one year. What was clear from the collected comments, moreover, is that the lifting of the freeze would entail significant costs and would implicate the need for overall reform.

ITTA agrees that re-imposing the separations processes would introduce significant and needless administrative burdens and costs on carriers, at a time when all carriers must be especially sensitive to unnecessary costs. That matter by itself, however, does not underlie ITTA’s support for extension of the freeze. Rather, ITTA supports an

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<sup>1</sup> *Jurisdictional Separations and Referral to the Federal-State Joint Board: Notice of Proposed Rulemaking*, CC Docket No. 80-286, FCC 09-24 (rel. Mar. 27, 2009) (NPRM).

<sup>2</sup> NPRM at para. 17.

<sup>3</sup> NPRM at para. 17 (internal citations omitted).

extension of the freeze that would be linked to USF and ICC reform. A return to earlier separations rules before comprehensive USF and ICC reform are completed could lead to the pointless and inefficient scenario in which carriers upgrade training, recruiting, and technical development to meet requirements of an unknown and quite possibly very temporary duration. In short, it is too soon to tell whether or how Part 36 separations rules would be affected by imminent ICC and USF overhaul. Accordingly, the Commission should act to avoid imposing significant costs to address what would likely be short-lived obligations.

Most other commenters expressly shared ITTA's view in this regard. A joint filing of the National Exchange Carrier Association (NECA), National Telecommunications Cooperative Association (NTCA), Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), Eastern Rural Telecom Association (ERTA), and Western Telecommunications Alliance (WTA) (collectively, Joint Filers) stated, "it would be wasteful to require these companies to devote scarce resources to comply with outdated separations procedures, especially since these procedures are likely to change substantially in the not-too-distant future as a result of separations reform."<sup>4</sup> The Joint Filers called for an extension to last for one year following issuance of USF and ICC reform orders.<sup>5</sup> Embarq urged an extension of at least three years, noting, "[i]f reform is completed earlier for all ILECs, or indeed if separations rules requirements are eliminated altogether for price cap carriers, then the additional insurance allowed by adopting the longer, three-year freeze will have cost

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<sup>4</sup> Joint Filers at 4.

<sup>5</sup> Joint Filers at 6.

nothing.”<sup>6</sup> Even Qwest, which is no longer subject to the separations rules, supported extension of the freeze until the Commission completes ICC and USF reform.<sup>7</sup>

Many parties also recognized that a year might not prove to be enough to complete separations reforms. USTelecom and Texas Statewide Telephone Cooperative, Inc. (TSTCI), for example, supported an extension of at least one year,<sup>8</sup> though TSTCI noted that it would not oppose a longer extension, as well.<sup>9</sup> The National Association of State Utility Consumer Advocates (NASUCA) stated, “practically speaking, extending the separations freeze is probably the only course of action that makes sense.”<sup>10</sup> And, while NASUCA urged the Commission to “commit to this being the last extension,” it emphasized that overall reform of jurisdictional separations is necessary.<sup>11</sup> NASUCA’s call for overhaul, however, is defined by the National Association of Regulatory Utility Commissioners’ (NARUC) assessment that, “achieving comprehensive reform in little more than a year is a somewhat daunting task . . . .”<sup>12</sup>

ITTA submits that no matter the commitment NARUC has pledged to helping see separations reform completed,<sup>13</sup> the prospect of completing separations reform prior to ICC and USF reform would be ambitious even in the best of circumstances. A far more prudent approach would be to complete ICC and USF reform as soon as practicable,

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<sup>6</sup> Embarq at 2.

<sup>7</sup> Qwest at 2.

<sup>8</sup> USTelecom at 8; TSTCI at 2.

<sup>9</sup> TSTCI at 2.

<sup>10</sup> NASUCA at 2.

<sup>11</sup> NASUCA at 2, 3.

<sup>12</sup> NARUC at 2.

<sup>13</sup> *See* NARUC at 2.

given the impending transitions among the executive leadership of the Commission, and to then incorporate newly-adopted paradigms from those proceedings into subsequent action on separations. A simple one-year stop-gap extension is neither prudent nor effective.

Carriers will incur costs long before the freeze actually expires, including those related to recruiting and training staff with the specialized skills sufficient to implement separations processes. Under regular and ordinary circumstances, carriers incur costs in order to meet defined and certain future regulatory requirements. By contrast, the regulatory requirements that may be in place upon the proposed expiration of the freeze in 2010 could well be up-ended by pending ICC and USF reform, or they could be eliminated altogether. The more rational, administratively efficient, and fiscally prudent approach is to defer any expiration of the freeze until one-year after implementation of final ICC and USF rules. Particularly in the current economic environment, carriers should not be compelled to expend resources toward tedious, outdated regulatory processes that may expire before they ripen.

Compounding arguments to extend the freeze is the significant question as to whether separations are or will be necessary or appropriate in an impending regulatory environment. As described by several parties, separations emerged in an era in which “clear distinctions” between interstate and intrastate services existed,<sup>14</sup> and now applies to only a segment of a thriving competitive industry.<sup>15</sup> The advent of “distance-less” services such as wireless, IP-enabled, and “bundled” one-price calling plans are moving

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<sup>14</sup> Embarq at 9.

<sup>15</sup> *See, i.e.*, USTelecom at 2.

the industry toward a construct in which the nexus between costs and jurisdictions is less defined. Qwest, Verizon, and AT&T have recently obtained relief from separations rules, because the Commission found that price cap regulation has rendered the rules unnecessary and not in the public interest.<sup>16</sup> Several mid-size price cap carriers, including Embarq, Frontier, and Windstream, currently seek the same relief.<sup>17</sup>

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<sup>16</sup> See, *Petition of AT&T, Inc. for Forbearance Under 47 USC § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*; *Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket Nos. 07-21, 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302 at ¶ 12 (2008), *pet. for recon. pending, pet. for review pending*, *NASUCA v. FCC*, Case No. 08-1226 (D.C. Cir. filed June 23, 2008); *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering*; *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*; *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's, ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*; *Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of ARMIS Reporting Requirements*; *Petition of Frontier and Citizens ILECs for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*; *Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*; *Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*; WC Dkt. Nos. 08-190, 07-139, 07-204, 07-273, 07-21, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 at ¶ 27 (2008), *pets. for recon. pending*.

<sup>17</sup> *Petition for Reconsideration of Embarq, Frontier, and Windstream*, WC Docket Nos. 08-190, 07-139, 07-204, 07-273, and 07-21 (filed Oct. 6, 2008).

Against this backdrop, ITTA calls upon the Commission to extend the separations freeze for at least one year following implementation of comprehensive ICC and USF reform. At the least, implementation of those reforms will likely be associated with a transition phase during which the Commission can reassess the proper role of separations and the manner in which, if any, separations processes should continue.

Respectfully submitted,

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