Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Jurisdictional Separations and Referral to the Federal-State Joint Board	))	CC Docket No. 80-286

COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;
NTCA – THE RURAL BROADBAND ASSOCIATION;
ITTA; EASTERN RURAL TELECOM ASSOCIATION; and
WTA – ADVOCATES FOR RURAL BROADBAND

The Commission has requested comment on a proposal to extend, until June 30, 2017, the current freeze of Part 36 category relationships and jurisdictional cost allocation factors applicable to incumbent local exchange carriers (ILECs).[1] The *FNPRM* also proposes to open a window for rate-of-return ILECs (RLECs) to unfreeze their cost category relationships.[2]

The National Exchange Carrier Association, Inc. (NECA), NTCA – The Rural Broadband Association, ITTA, the Eastern Rural Telecom Association (ERTA), and WTA – Advocates for Rural Broadband (WTA) (collectively, the "Associations"), representing rural ILECs throughout the United States, support the proposed extension of the freeze until June 30,

[1] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking, FCC 14-27 (rel. Mar. 27, 2014) (*FNPRM*).

[2] *Id.* ¶ 15.

2017, as the Commission continues to implement changes adopted in the *USF/ICC Order* and considers additional USF/ICC reform measures.[3]

The Associations have previously suggested the Commission provide RLECs that chose to freeze their cost category relationships in 2001 an opportunity to update these relationships to reflect current investments and service offerings.[4] Accordingly, the Associations support the window proposed in the FNPRM, and suggest that RLECs be given the opportunity to refreeze those relationships after they have been re-categorized. In approving such petitions, the Commission should provide individual carriers and NECA sufficient time to reflect such categorization changes in their access rates and related data submissions.

I. THE FREEZE SHOULD BE EXTENDED FOR A THREE-YEAR PERIOD AS USF/ICC REFORM CONTINUES.

As the *FNPRM* points out, ILECs have not been required to prepare separations studies since the inception of the freeze in 2001.[5] If current separations rules return to force, RLECs and smaller price cap ILECs would be required to incur substantial expense and time to reinstitute

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[3] *See e.g., Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform-Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-32, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011), ¶ 720 (*USF/ICC Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

[4] *See, e.g.* Comments of NECA, NTCA, OPASTCO, ERTA, WTA and ITTA, CC Docket No. 80-286, at 4 (Apr. 5, 2012); Comments of NECA, NTCA, OPASTCO, ERTA, and WTA, CC Docket No. 80-286, at 4 (Mar. 28, 2011); Comments of NECA, NTCA, OPASTCO, ERTA, and WTA, CC Docket No. 80-286, at 5 (Apr. 19, 2010).

[5] *FNPRM* ¶ 12.

complex separations studies, at a time when many may not have the necessary employees and systems in place to do so and at a time when modified and extended corporate operations expense caps are reducing federal support for such expenses. This would be a particular burden for RLEC cost companies that typically rely on external consultants to perform such studies. It also would be burdensome for companies that rely upon internal resources, as removal of the current freeze would necessitate specialized training and reassignment of personnel to these tasks. Pre-2001 separations procedures would likely need to be substantially revised to comply with revisions to the Commission's rules that have occurred over the past thirteen years. These factors make it unlikely that ILECs would to be able to accomplish such studies should the freeze expire in June 2014.

The Commission has previously recognized that separations reform is inextricably intertwined with changes to USF/ICC rules.[6] Each area is governed by complex sets of regulations, set out in Parts 36, 51, 54, and 69 of the Commission's rules, and each must "mesh"

[6] *See, e.g., Connect America Fund,* WC Docket No. 10-90*, A National Broadband Plan for Our Future,* GN Docket No. 09-52, *Establishing Just and Reasonable Rates for Local Exchange Carriers,* WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337*, Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link Up*, WC Docket No.03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 4554 (2011), ¶ 396 (seeking comment on how proposed reforms may affect or be affected by existing separations process or future reform); *Id*. ¶ 563 (whether the restructure mechanism under consideration would affect costs currently allocated to intrastate categories); *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd. 6475 (2009), ¶ 303 ("we enlist the aid of the Separations Joint Board to evaluate the need for any additional increases in interstate end-user rates for carriers to recover any net loss in interstate and/or intrastate intercarrier compensation revenues as a result of the reform measures we adopt today.").

for the process to work.[7] An extension of at least three years will provide some stability for carriers during this period of uncertainty and allow both the Commission and Joint Board to focus on implementing reforms adopted in the Commission's *USF/ICC Order* and to develop additional reforms that will assist rural carriers in extending broadband facilities and services throughout their service territories.[8]

II. RLECs WHO ELECTED TO FREEZE CATEGORY RELATIONSHIPS IN 2001 SHOULD BE GIVEN THE OPPORTUNITY TO UNFREEZE OR UPDATE THOSE RELATIONSHIPS

When the separations freeze was adopted, RLECs were given the option of freezing their cost category relationships.[9] Over the years circumstances have changed significantly. Some of the companies electing the freeze have converted to price cap regulation, and the Commission has permitted two RLECs to "unfreeze" their category relationships (two other petitions remain pending).[10] Today, only 43 NECA pool participants continue to use frozen category

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[7] *E.g.*, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd. 4685 (2005), ¶ 213 ("Implementation of any of the rule changes the Commission is considering in this Further Notice may require extensive modifications to existing Federal Rules. The sections of the Commission's rules that would likely have to be amended include, without limitation, the following: Part 32: Uniform System of Accounts for Telecommunications Companies; Part 36: Jurisdictional Separations Procedures; Standard Procedures for Separating Telecommunications Property Costs, Revenues, Expenses, Taxes, and Reserves for Telecommunications Companies; Part 51: Interconnection; Part 54: Universal Service.").

[8] *See e.g.*, Comments of NTCA, NECA, WTA, and ERTA, WC Docket No. 10-90 (filed June 17, 2013); *FCC Announces Tentative Agenda for April Open Meeting*, News Release (rel. Apr. 2, 2014).

[9] *FNPRM* ¶ 15.

[10] *Id.*

relationships. As the Associations have previously pointed out, these companies certainly did not expect their original five-year election might extend for thirteen years or more.[11]

Over these past thirteen years RLECs have experienced significant changes in investment and service demand levels. The remaining few RLECs in this situation should have the ability to unfreeze their cost category relationships and calculate categories of investment and expenses based on today's actual data, rather than allocations reflecting a network investment environment made thirteen years ago. Such an opportunity would recognize significant investments in plant and reflect the substantial increase in investment in emerging services, such as broadband and Ethernet services.[12]

In addition to the Commission's proposed window to unfreeze the cost category relationships for these RLECs, the Associations suggest affected RLECs be given the option to recalculate and "refreeze" their Part 36 category relationships based on current investment and expense levels. Doing so would permit these companies to update their separations studies without the burden of a continuing requirement to update them each year. This will also enable them to further reduce administrative expenses associated with cost studies, and would likely have minimal impacts on overall cost allocations.

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[11] *Supra*, note 4. *See also, Petition by Eastex Telephone Cooperative, Inc. Pursuant to 47 C.F.R Sections 36.3, 36.123 – 126, 36.152 -157, and 36.372 -382 for Commission Approval to Unfreeze Part 36 Category Relationships*, CC Docket No. 80-286, Order, 27 FCC Rcd. 6357 (2012).

[12] The State Members of the Joint Board on Separations have already endorsed extension of the separations freeze and the proposed window for unfreezing category relationships in a letter dated March 31, 2014. *See* Letter from John Burke, State Chair, Federal-State Joint Board on Jurisdictional Separations, to Commissioner Rosenworcel, CC Docket No. 80-286 (Mar. 31, 2014).

As part of the filing “window” process, the Commission asks companies seeking a waiver to provide detailed information in support of such requests, including descriptions of unique circumstances of petitioners’ service areas, changes made to networks since the 2001 freeze, a demonstration of the impact a waiver would have on petitioners’ access rates, and descriptions of how a waiver would affect carriers’ Eligible Recovery levels and the Universal Service Fund.[13] The Associations recognize that grant of requests to unfreeze category relationships for companies subject to the freeze could have significant impacts, particularly on special access rates for companies within the NECA pool. Accordingly, the Commission should allow adequate time to review recategorization data and to assure that adjusted rates can become effective on the same date a waiver of the freeze becomes effective.

III. CONCLUSION

For all the reasons stated herein, the Associations support the Commission’s proposals to extend the current separations freeze for at least an additional three years and to establish a filing window to give those RLECs that elected to freeze their Part 36 category relationships in 2001 the option to unfreeze those relationships to reflect updated investment and expense levels. The Associations also urge the Commission to give those RLECs the option to refreeze their category relationships after the recategorization occurs. Finally, the

[13] *FNPRM* ¶ 17.

Commission should provide sufficient time after any waivers become effective to assure that impacts can be fully reflected in access rates and related data.

Respectfully submitted,

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