Before the
Federal Communications Commission
Washington, DC 20554

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

COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC. (NECA),
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION (NTCA),
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES (OPASTCO),
EASTERN RURAL TELECOM ASSOCIATION (ERTA),
WESTERN TELECOMMUNICATIONS ALLIANCE (WTA)

The Federal-State Joint Board on Separations (Joint Board) has requested comment on a proposal by its State Members (State Members) for interim adjustments to jurisdictional separations allocation factors and category relationships, pending comprehensive reform.[1] The Joint Board also seeks comment on issues related to permanent separations reform referred by the Commission in the *2009 Separations Freeze Extension Order.*[2]

The Associations listed above[3] respectfully suggest the Joint Board decline to recommend implementation of the State Members' interim proposals, as the resulting

[1] *Federal-State Joint Board on Separations Seeks Comment on Proposal For Interim Adjustments to Jurisdictional Separations Allocation Factors and Category Relationships Pending Comprehensive Reform and Seeks Comment on Comprehensive Reform,* CC Docket No. 80-286, Public Notice, FCC 10J-1 (Mar. 30, 2010) (*Public Notice*).

[2] *Id.* at 2, *citing Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6162 (2009), ¶¶ 15-20 (*2009 Separations Freeze Extension Order*).

[3] NECA's primary responsibilities involve preparation of interstate access tariffs and administration of related revenue pools. NECA is also responsible for collecting certain high-cost loop data from its member ILECs, and has served as administrator of the interstate Telecommunications Relay Services (TRS) fund since that fund's inception in 1993. NECA also

reallocations would cause dramatic cost shifts to interstate broadband transmission services. These shifts, in turn, would impose significant upward pressure on broadband rates for end users, severely undermining prospects for expanded broadband deployment and adoption in rural areas.

Rather than pursue such disruptive interim changes to existing separations procedures, the Associations believe the Joint Board should defer further action on comprehensive separations reform until the Commission has issued orders reforming existing universal service fund (USF) and intercarrier compensation (ICC) rules, in connection with its implementation of the National Broadband Plan (NBP). Existing separations rules, while far from perfect, have been effective in supporting deployment of broadband-capable networks in the rural areas served by Association members, and should generally be left in place until the Commission establishes new broadband-oriented USF and ICC mechanisms.

I. Background

The State Members have proposed interim adjustments of separations allocation factors and category relationships pending more comprehensive separations reform.[4]

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conducts extensive training for its member companies and other industry participants, publishes reports and studies relating to its member companies' technical service capabilities and cost characteristics, and files at the Commission's request quarterly reports of interstate access usage levels. *See generally,* 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983). NTCA represents more than 580 rural rate-of-return regulated telecommunications providers. OPASTCO is a national trade association representing approximately 500 small ILECs serving rural areas of the United States. ERTA is a trade association representing approximately 68 rural telephone companies operating in states east of the Mississippi River. WTA is a trade association that represents over 250 rural telecommunications companies operating in the 24 states west of the Mississippi River. Most members serve fewer than 3000 access lines overall and fewer than 500 access lines per exchange.

[4] Letter from Steve Kolbeck, State Chairman, Federal-State Joint Board on Jurisdictional Separations, to Marlene H. Dortch, FCC, CC Docket No. 80-286 (Mar. 5, 2010) (*State Members' Interim Proposal*). In support of proposed interim measures the State Members cite cost /revenue misallocations resulting from increased use of packet-based networks; increased sales of DSL and other broadband services; extraordinary increases in bandwidth use caused by uploading,

The first part of the State Members' proposal, intended to address growth in the special access market over the past ten years, would involve a one-time adjustment to modify the direct assignment of both Cable and Wire Facility Loops (C&WF) and Central Office Equipment (COE) investment for those carriers with frozen category relationships. They propose an adjustment based on carriers' 2008 revenue streams for special access and total regulated revenues. This calculation would be done once to change the interstate separations ratios prior to July 2010, and then the category and subcategory ratios would be re-frozen for an additional period of three years, effective July 1, 2010.[5]

The second part of the State Members' proposal is intended to address assignment of C&WF Category 1 costs. Here, the State Members propose to create additional loop subcategories within C&WF Category 1, and to apply distinct fixed separations factors to each new subcategory based on usage.[6] With this new method, State Members expect "[m]ore costs would be assigned to the interstate jurisdiction or to non-regulated costs, an assignment that is consistent with the FCC's assertion of jurisdiction over those services."[7] The proposal would also standardize the allocation of costs associated with loops used to provide unbundled network elements (UNEs), and apply a method for allocating revenues from multi-jurisdictional bundled services.[8] The proposed method would use information derived directly from billing records of both the carrier and its affiliates, and would require adjustments to be performed every year.[9]

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transmission, and downloading of digital photos and video files; FCC decisions to alter the jurisdictional nature of various services; and a wide variety of other factors. *Id.* at 2-3.

[5] *Id.* at 10.

[6] *Id.* at 11.

[7] *Id.*

[8] *Id.*

[9] *Id.*

II. Discussion

A. The State Members' Proposals Would Undermine Broadband Deployment and Adoption in Rural America.

Part I of the State Members' interim proposal would primarily affect larger price cap carriers, as relatively few companies who elected to freeze category relationships in 2001 remain on RoR regulation.[10] While the Associations believe it would be reasonable to allow the small remaining number of RoR carriers with frozen category relationships the one-time *option* to either unfreeze, or recalculate and refreeze, those relationships based on current investment and expense levels,[11] the Joint Board should not recommend mandatory, industry-wide updates of frozen category relationships at this time based solely on special access revenues, as proposed by the State Members, as this approach could unfairly result in increases in interstate allocations without accounting for revenue reductions in other categories, which could potentially offset such increases.

The second part of the State Members' proposal, which would require subject carriers to create several new C&WF subcategories and assign lines to each based on annual studies of billing records, is even more troubling. As a threshold matter, the Associations strongly question the wisdom of undertaking such an exercise at a time when the Commission is focused on implementing recommendations contained in the NBP. Increasing regulations that require companies to create whole new sets of subaccounts, and to divide costs into finer levels of granularity based on whether they relate to voice and data services, voice, data and video

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[10] *See* NECA, *et al.*'s Comments, CC Docket No. 80-286 (Apr. 19, 2010), at 6 ("Of the over 80 study areas initially using frozen category relationships, nearly half have since converted to price caps. This leaves 46 RoR carriers who continue to use frozen category relationships.") (*Associations' Comments*).

[11] *Id.* at 5-6. *See also*, Petition of Gila River Telecommunications, Inc. to Unfreeze Part 36 Category Relationships, CC Docket No. 80-286 (Nov. 21, 2006); Gila River Telecommunications' Comments, CC Docket No. 80-286 (Apr. 19, 2010).

services, state or interstate, information services, etc., especially when competitors are largely unregulated, runs squarely against current technical, marketplace and regulatory trends, which tend to blur traditional service definitions.[12]

More importantly, the effects of the State Members' proposal would likely be to substantially increase rates for broadband transmission services offered by RoR regulated carriers. Under today's rules, C&WF Category 1 costs are assigned to subcategories 1.1, 1.2 and 1.3, with subcategory 1.3 costs apportioned between the state and interstate jurisdiction based on a 75/25 percent gross allocation.[13] Interstate-allocated costs are allocated to the common line category under the Commission's Part 69 rules, and recovered from subscriber line charges and Interstate Common Line Support (ICLS).

In contrast, the State Members' proposal would subdivide C&WF Category 1.3 amounts to further subcategories based on line usage (data, video, etc.), with allocation factors that would reduce amounts assigned to the state jurisdiction and increase amounts assigned to interstate. Under existing rules, the additional interstate assignments would generally be attributable to the special access category, with most costs likely further assigned to Digital Subscriber Line (DSL) services as the cause for the additional interstate cost assignment.

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[12] The State Members' proposal also assumes carriers can divide plant investment among these various categories based on studies of their billing records (or affiliates' records, in cases where transmission facilities are provided to related entities on a wholesale basis). Even if it is possible to obtain information from carrier or affiliate records that "fits" the new subcategories envisioned by the State Members, it is not at all clear how carriers would obtain this type of information from non-affiliated wholesale customers, who may offer completely different types of service bundles to end users and would be understandably reluctant to share revenue data with their underlying carrier.

[13] 47 C.F.R. § 36.154(c). The Commission's Part 36 rules also incorporate an "expense adjustment" mechanism as part of the underlying High Cost Fund support calculations. Implementing Part II of the State Members' proposal, without simultaneously adjusting loop reporting rules and the expense adjustment algorithm, could result in substantial over-allocations of costs to the interstate jurisdiction, in some cases exceeding one hundred percent.

To understand the potential impacts of this proposal on DSL rates, NECA conducted an analysis of allocations by 524 "cost" companies participating in its Traffic Sensitive (TS) pool.[14] Using a standard cost allocation program, NECA reapportioned C&WF Category 1.3 costs for each of these companies based on the proportion of DSL lines reported in pool settlements by each company, first assuming all DSL lines would be allocated to the "Voice & Data" category proposed by the State Members (*i.e.*, Category 1.4) and secondly assuming all DSL lines would be allocated to the proposed Voice, Data and Video category (*i.e.*, Category 1.6).[15]

Comparison of "before" and "after" allocation results using these alternative methods shows that if existing DSL lines are assigned to proposed C&WF Category 1.4 (voice and data), interstate special access revenue requirements would increase by 47 percent overall. Under the assumption that the increase in the special access revenue requirement is due to the assignment of costs for DSL services, if the entire C&WF Category 1.4 impact were to be allocated to DSL, revenue requirements for this service would increase by approximately 133 percent. Similarly, if DSL lines were all assigned to proposed C&WF Category 1.6 (voice, data and video), overall interstate special access revenue requirements would increase by approximately 120 percent. If the entire impact were to be assigned to DSL, interstate revenue requirements for this service would increase by approximately 340 percent.

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[14] Other NECA TS pool participants settle on the basis of the interstate average schedules, which are designed to "simulate" pool disbursements of similarly-situated cost companies. *See* 47 C.F.R. § 69.606.

[15] The above analysis demonstrates potential extremes of the State Members' approach (*i.e.*, all DSL lines assigned to new C&WF Category 1.4 vs. all DSL lines assigned to new Category 1.6). Since there would typically be a mix of DSL lines serving the various new subcategories, actual outcomes will likely fall somewhere in between these results.

The State Members appear to recognize their proposal would potentially have the effect of increasing cost allocations and therefore rates for broadband transmission services.[16] The potential magnitude of this impact is significant. For example, data submitted with NECA's 2009 Annual Access Tariff Filing showed overall interstate special access revenue requirements for companies participating in NECA's TS pool of approximately $585.9 million. A 47 percent increase in this amount would be $275 million, to be recovered in interstate access rates for proposed new C&WF Category 1.4 services. Alternatively, if all existing DSL lines were to be assigned to proposed new C&WF Category 1.6, interstate TS pool special access revenue requirements would increase by approximately $700 million.

Currently the lowest NECA monthly rates for interstate DSL services are $32.79 retail and $12.39 wholesale.[17] Loading the above increases on DSL services would potentially raise these rates by a factor of 2.3 (*i.e.*, to $75.42 retail/$28.50 wholesale) assuming all lines are classified under new Category 1.4. Rates would potentially increase by a factor of 4.4 (*i.e.*, to $144.28 retail/$54.52 wholesale) assuming all lines are classified under new Category 1.6. Such cost increases would likely occur, moreover, well in advance of development and implementation of any new broadband-specific universal service support mechanisms for high-cost rural areas arising out of the NBP, and in fact could severely complicate implementation of such proposals.

The record compiled in the Commission's NBP proceeding demonstrates a clear relationship between broadband prices and adoption rates. The FCC's own NBP Consumer Survey, ***Broadband Adoption and Use in America***, found that "affordability and lack of digital

[16] *See State Members' Interim Proposal* at 11, 14.

[17] NECA Access Service Tariff F.C.C. No. 5, Section 17.4.9, Digital Subscriber Line Access Services.

skills are the main reasons why 93 million Americans -- one-third of the country -- are not connected to high-speed Internet at home."[18] When prompted for the main reason they do not have broadband, "36% of non-adopters cite cost."[19] And, as the Plan makes clear, cost is a particular problem in low income households.[20] While a variety of factors contribute to this gap, monthly charges for broadband Internet access services, even at current levels, are clearly a concern for national broadband adoption rates. Doubling or tripling these rates would dramatically worsen deployment and adoption rates and substantially undermine the Commission's NBP efforts.

B. The Joint Board Should Defer Consideration of Any Further Separations Reform Proposals Until USF and ICC Reform Components of the National Broadband Plan Are Adopted.

As the Associations recently explained to the Commission,[21] separations reform is inextricably intertwined with both ICC and USF reform. Each area is governed by complex sets of regulations, set out in Parts 36, 51, 64 and 69 of the Commission's rules, and each must "mesh" for the process to work.[22]

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[18] *93 Million Americans Disconnected from Broadband Opportunities*, News Release (Feb. 23, 2010) (announcing release of the *Broadband Adoption and Use in America* survey.) (*FCC Broadband Survey*).

[19] *FCC Broadband Survey* at 5. *See also* Connecting America: The National Broadband Plan, FCC (rel. Mar. 16, 2010), at 168. (*NBP*).

[20] *NBP* at 172.

[21] *Associations' Comments* at 4.

[22] *E.g., Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005), at ¶ 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..").

The Commission recently published an ambitious schedule for rulemaking proceedings designed to implement various aspects of the NBP.[23] That schedule contemplates initiation of over 60 proceedings during the coming year, several of which involve USF and ICC reform which most directly implicate separations changes. Recognizing the complexity of this endeavor, the Commission's NBP contemplates a two-year process for revising rules governing ICC and USF.[24]

While it would perhaps be possible to initiate additional proceedings to consider separations reform issues contemporaneously with changes to USF and ICC policy, the Associations believe a more practical approach would be to determine first the basic policy directions governing regulation and funding of broadband services, and consider separations implications afterwards.

The Associations recognize the State Members' proposals are intended to be interim in nature. Nevertheless, as discussed above, requiring new categorization practices, even on an interim basis, would be a complex endeavor for small rural carriers and would likely have dramatic and potentially devastating impacts on cost allocations and rates for broadband transmission services. Such impacts could substantially complicate efforts to design new broadband-focused universal service programs, as well as any new ICC mechanisms. It makes no sense, then, for the Joint Board, the Commission and affected carriers to expend the considerable resources required to implement new separations procedures in the near term, when those revised procedures will need to be revisited immediately following adoption of ICC and USF reforms. The Associations accordingly suggest the Joint Board defer consideration of any

[23] *FCC Announces Broadband Action Agenda*, News Release (Apr. 8, 2010) (Agenda at http://www.broadband.gov/plan/chart-of-key-broadband-action-agenda-items.pdf).

[24] *NBP*, Chapter 8, at 154, 166.

further separations changes until such time as the Commission adopts orders specifying rules governing revised universal service and ICC mechanisms.

III. Conclusion

For all the reasons stated above, the Associations recommend the Joint Board decline to recommend implementing the proposals advanced by the State Members for interim separations reform. The Associations further suggest the Joint Board refrain from further consideration of separations changes until the Commission adopts orders reforming existing universal service and ICC mechanisms.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 29th day of April, 2010 by electronic filing and e-mail to the persons listed below.

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