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 Commission has requested comment on a proposal to extend, until June 30, 2011, the current freeze of Part 36 category relationships and jurisdictional cost allocation factors.[1]

The above-named Associations, representing rural incumbent local exchange carriers (ILECs) throughout the United States (collectively, the Associations),[2] support extension of the

---

[1] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, FCC 10-47 (rel. Mar. 29, 2010) (*NPRM*).

[2] 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 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

freeze, but again respectfully suggest the Commission specify the freeze extension will extend for a period of at least one year following issuance of Commission orders reforming existing intercarrier compensation (ICC) and high-cost universal service fund (USF) support rules.[3] As discussed below, this approach will help avoid the need for additional extension proceedings and will assure adequate time to analyze needed changes to existing separations rules in light of changes stemming from implementation of the Commission's National Broadband Plan (NBP).[4]

Although the Associations support extension of the existing freeze, the Commission should continue to accommodate specific adjustments to separations where needed.[5] Specifically, in its order extending the freeze, the Commission should permit rate of return (RoR)-regulated ILECs that elected to freeze their category relationships in 2001 an opportunity to readjust those results for the remainder of the freeze or to unfreeze their category relationships. With the freeze now proposed to remain in place until 2011 or potentially beyond, carriers who made their original election in 2001 should be permitted the option to re-assess the impacts of their 2001 election and either unfreeze or apply updated category relationships effective with calendar year 2010 cost studies.

---

members serve fewer than 3000 access lines overall and fewer than 500 access lines per exchange.

[3] *See* NECA, *et al*.'s (Associations) Comments, CC Docket No. 80-286 (Apr. 17, 2009), at 2-6.

[4] Connecting America: The National Broadband Plan, FCC (rel. Mar. 16, 2010) (*National Broadband Plan*).

[5] The Commission recently granted a petition to change the USF high-cost Local Switching Support rules. *See High-Cost Universal Service Support*, WC Docket No. 05-337, *Jurisdictional Separations*, CC Docket No. 80-286, *Coalition for Equity in Switching Support Petition for Reconsideration*, Report and Order and Memorandum Opinion and Order, FCC 10-44 (rel. Mar. 18, 2010).

I. DISCUSSION

A. The Freeze Should Be Extended For At Least One Year Following Completion of ICC and USF Reform Proceedings.

Clearly an extension of the freeze is necessary. As the NPRM itself points out, rural ILECs have not been required to utilize the programs and expertise necessary to prepare separations information since the inception of the freeze in 2001.[6] If current separations rules return to force, rural ILECs would be required to incur substantial expense to reinstitute complex separations studies, at a time when they likely do not have the necessary employees and systems in place to do so. This would be a particular burden for small RoR "cost" companies, who have limited internal resources and traditionally have relied on specialized cost consultants to perform these studies. It would also be burdensome for companies that rely upon internal resources, as removal of the current freeze would necessitate specialized training and assignment of dedicated personnel to these tasks. It is highly unlikely these carriers could obtain the necessary resources to conduct required studies should the freeze be allowed to expire in June 2010.

Moreover, it would be wasteful to require these companies to devote scarce resources to comply with pre-2001 separations procedures, especially since these procedures are likely to change substantially as a result of implementation of the recommendations in the National Broadband Plan and ensuing separations reform.

While the Associations support extension of the freeze, we continue to recommend the Commission extend the freeze for at least one year following issuance of orders adopting universal service and intercarrier compensation reforms, as contemplated in the Commission's

[6] *NPRM* at ¶ 10.

National Broadband Plan. As the Commission has previously recognized,[7] 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.[8]

In the National Broadband Plan, the Commission indicated at least a two-year process for revising the rules governing ICC and USF.[9] It makes no sense then for the Commission to expend considerable resources to have new separations procedures in place by June 30, 2011 when it will be forced to revisit those rules in the year or two following adoption of ICC and USF reforms. On the other hand, it is not unreasonable for the Commission to establish at least a one-year time limit for reform of separations rules once critical components of ICC and USF reform are determined. This approach would provide a more reasonable opportunity for the Commission to conform and integrate revised separations rules with new USF and ICC regulations.

---

[7] *E.g., 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), at ¶ 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.").

[8] *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..").

[9] *National Broadband Plan*, Chapter 8, at 154, 166.

For these reasons, the Associations respectfully urge the Commission to refrain from establishing a date certain for expiration of the current separations freeze, and instead specify the current freeze will extend for at least one year following issuance of Commission orders reforming existing ICC and high-cost USF support rules.[10]

B. RoR Carriers Who Elected to Freeze Category Relationships in 2001 Should Be Given a One-time Opportunity to Update Those Relationships.

The NPRM tentatively concludes extending the freeze on an interim basis will continue to result in reasonable cost apportionments, in conformance with the Supreme Court's *Smith v. Illinois Bell* decision.[11] The NPRM points out in this regard that extending the freeze will cause price cap carriers to continue to use the same relationships between categories of investment and expenses within Part 32 accounts, and the same jurisdictional allocation factors, that have been in place since the inception of the current freeze.[12] RoR carriers will also continue to use the same frozen jurisdictional allocation factors, but category relationships will remain frozen only for those companies who originally opted to freeze these factors.[13]

The Associations agree extending the separations freeze for an additional interim period will maintain reasonable cost allocations, at least for most carriers. For a small number of RoR ILECs who continue to use category relationships that have been frozen since 2001, however, simply extending the current freeze of category relationships may not produce reasonable results. Only a small number of RoR carriers currently use frozen category relationships. Of the over 80

---

[10] Because the extended freeze will continue to have a firm one-year expiration date, the Commission, the Joint Board and industry participants will retain a strong incentive to resolve separations reform issues in a timely manner following ICC and USF reform.

[11] *NPRM* at ¶ 11.

[12] *Id.*

[13] *Id.*

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.

At the time it imposed the original freeze, the Commission recognized that a mandatory freeze of category relationships, as well as traffic factors, could cause harm to small RoR ILECs, particularly those expecting significant changes in investment levels during the course of the freeze.[14] Given the option to freeze category relationships, small RoR carriers were able to weigh the benefits and potential risks associated with a freeze of category relationships over the expected five-year duration of the initial freeze. These companies did not, however, contemplate their five-year election might extend for an additional four years beyond 2006, much less until 2011, as the Commission now proposes.

As an illustration of the harm such unplanned extensions can cause, the Commission has before it a petition for waiver filed by Gila River Telecommunications, Inc. (GRTI), a small, rural RoR ILEC serving Native American tribal lands in Arizona.[15] Like other RoR carriers, GRTI decided to freeze its category relationships with the expectation the Commission's 2001 separations freeze would last no longer than five years. Seeking to extend service to additional portions of its territory, GRTI has made substantial network upgrades and reconfigurations.[16] With its category relationships frozen, however, GRTI has found itself unable to recover the additional costs via the Commission's high-cost universal service program, and estimates it is

---

[14] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 (2001), ¶ 58 (*2001 Separations Freeze Order)*.

[15] Petition of Gila River Telecommunications, Inc. to Unfreeze Part 36 Category Relationships, CC Docket No. 80-286 (Nov. 21, 2006).

[16] *Id.* at 7. *See also* Letter from Mitchell F. Brecher, to Marlene H. Dortch, FCC, CC Docket No. 80-286 (Jan. 21, 2010) (*Gila River Letter*).

suffering a loss of over $1,417,000 in annual high-cost USF support.[17] GRTI recently estimated this would represent about 14 percent of annual revenues.[18]

Other small RoR ILECs have also experienced significant changes in investment and service demand since category relationships were initially frozen. These carriers are currently seeking to upgrade their networks to meet demands for advanced services, including broadband, but in some cases find themselves hindered by outdated cost categorizations. RoR carriers in this situation should have the ability to calculate categories of investment and expenses based on today's actual data, rather than allocations reflecting a network investment environment nearly ten years old.

The Commission should resolve such problems by including a "fresh look" categorization option for these RoR carriers if it extends the overall separations freeze. This would permit RoR carriers that have had their category relationships frozen since 2001 a one-time *option* to unfreeze, or recalculate and re-freeze, their Part 36 category relationships based on current investment and expense levels, effective with 2010 cost studies. This option would be especially important for companies (like GRTI) who elected to freeze category relationships in 2001, but subsequently made significant investments in plant that, absent the freeze, would result in additional allocations of loop plant to the interstate jurisdiction.[19]

II. CONCLUSION

The Associations support the Commission's proposal to extend the current separations freeze, but respectfully suggest the freeze extension should not terminate on a specific date in

---

[17] *Gila River Letter* at 1.

[18] *Id.* at 2.

[19] At a minimum, the Commission should permit those companies who elected to freeze their category relationships in 2001 the opportunity to unfreeze these relationships for the remainder of the extended freeze period.

2011, but should instead extend for a period not to exceed one year following issuance of Commission orders reforming existing ICC and high-cost USF support rules. This will avoid the need for additional extension proceedings and will provide the Commission and the industry adequate time to analyze needed changes to existing separations rules in light of revised ICC and USF rules that will result from implementation of the Commission's National Broadband Plan.

The Associations also request the Commission permit those RoR carriers who opted to freeze their category relationships in 2001 an immediate opportunity to unfreeze, or update and re-freeze, their category relationships for the remainder of the overall interim freeze.

April 19, 2010

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.
By:

Richard A. Askoff
Its Attorneys
80 South Jefferson Road
Whippany, NJ 07981
(973) 884-8000

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION
By: /s/ Daniel Mitchell
Daniel Mitchell
Karlen Reed
Regulatory Counsel
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

ORGANIZATION FOR THE PROMOTION
AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES
By: /s/ Stuart Polikoff
Stuart Polikoff
Vice President – Regulatory Policy and
Business Development
2020 K Street NW, 7th Floor
Washington, DC 20006
(202) 659-5990

WESTERN TELECOMMUNICATIONS ALLIANCE
By: /s/ Derrick Owens
Derrick Owens
Director of Government Affairs
317 Massachusetts Avenue N.E., Ste. 300 C
Washington, DC 20002
(202) 548-0202

EASTERN RURAL TELECOM ASSOCIATION
By: /s/ Jerry Weikle
Jerry Weikle
Regulatory Consultant
5910 Clyde Rhyne Drive
Sanford, NC 27330
(919) 708-7404

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 19th day of April, 2010 by electronic filing and e-mail to the persons listed below.

By: /s/ Elizabeth R. Newson
Elizabeth R. Newson

The following parties were served:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC. 20554

Charles Tyler
Federal Communications Commission
TAPD
Wireline Competition Bureau
445 12th Street, SW
Washington, DC 20554
Charles.Tyler@fcc.gov

Best Copy and Printing, Inc.
Room CY-B402
445 12th Street, SW
Washington, DC 20554
fcc@bcpiweb.com