Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES;
EASTERN RURAL TELECOM ASSOCIATION; and
WESTERN TELECOMMUNICATIONS ALLIANCE

The Commission has requested comment on a proposal to extend, until June 30, 2012, the current freeze of Part 36 category relationships and jurisdictional cost allocation factors.[1]

The above-named Associations, representing rural rate-of-return incumbent local exchange carriers (RLECs) throughout the United States,[2] support extension of the freeze. While, the Associations are optimistic the Commission will make significant progress this year

[1] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, FCC 11-34 (rel. Mar. 1, 2011) (*NPRM*).

[2] The National Exchange Carrier Association, Inc. (NECA) is responsible for preparation of interstate access tariffs and administration of related revenue pools and collection of certain high-cost loop data. *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). The National Telecommunications Cooperative Association (NTCA) is a national trade association representing more than 580 rural rate-of-return regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing approximately 470 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. The Western Telecommunications Alliance (WTA) is a trade association that represents over 250 small rural telecommunications companies operating in the 24 states west of the Mississippi River. The Eastern Rural Telecom Association (ERTA) is a trade association representing approximately 68 rural telephone companies operating in states east of the Mississippi River.

in reforming its intercarrier compensation (ICC) and universal service fund (USF) rules,[3] and perhaps begin to explore and address separations-related matters in connection with that process, we recommend the Commission extend the freeze for not just a single year, but rather for a one-year period following the adoption of comprehensive ICC and USF reform rules. This approach will provide adequate time for the Joint Board and interested parties to consider how existing separations rules should be conformed to new ICC and USF policy directions, and avoid the need for further one-year extension proceedings should the process not be complete by June 2012.

I. THE FREEZE SHOULD BE EXTENDED FOR A ONE-YEAR PERIOD FOLLOWING COMPREHENSIVE ICC AND USF REFORM.

Clearly an extension of the freeze is necessary. As the NPRM itself points out, ILECs have not been required to utilize the programs and expertise necessary to prepare separations information since the inception of the freeze in 2001.[4] If current separations rules return to force, RLECs would be required to incur substantial expense and time 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 rate-of-return (RoR) "cost" companies, which have traditionally relied on specialized 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 reassignment of personnel to these tasks. These carriers are unlikely to have necessary resources in place should the freeze expire in

[3] *See, 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, FCC 11-13 (rel. Feb. 9, 2011) (*ICC/USF NPRM*).

[4] *NPRM,* ¶ 11.

June 2011. 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 any ICC/USF Reform Order.

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 the Commission has previously recognized,[5] and also acknowledges in the ICC/USF NPRM,[6] 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, 54, and 69 of the Commission's rules, and each must "mesh" for the process to work.[7]

It makes no sense for the Commission to expend considerable resources to have separations procedures in place by June 30, 2012 while it is in the midst of considering comprehensive reforms of related ICC and USF rules. It would not be unreasonable, however,

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[5] *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), ¶ 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.").

[6] *ICC/USF NPRM,* ¶ 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).

[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.").

for the Commission to accomplish separations reform within a year after critical components of ICC and USF reform are determined.

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 one year following issuance of Commission orders reforming existing ICC and high-cost USF support rules.[8]

II. ROR CARRIERS WHO ELECTED TO FREEZE CATEGORY RELATIONSHIPS IN 2001 SHOULD BE GIVEN A ONE-TIME OPPORTUNITY TO UPDATE THOSE RELATIONSHIPS

While extending the separations freeze for an additional interim period will maintain reasonable cost allocations for most carriers, a small number of RLECs continue to use category relationships that have been frozen since 2001.[9] As the Associations have pointed out in prior comments, companies that originally elected to freeze category relationships did not contemplate their five-year election might extend for an additional five or six years beyond 2006.

Many RLECs have experienced significant changes in investment and service demand since category relationships were initially frozen. As these carriers upgrade their networks to

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[8] 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.

[9] The existing separations freeze affects two aspects of studies to determine telephone costs by jurisdiction. First, companies categorize each component of their investment in each account according to its function (called cost categorization). In the original Separations Freeze Order, the Commission required price cap carriers to freeze their category relationships, but did not require rate-of-return (RoR) carriers to do so instead providing RoR carriers a one-time option to freeze their category relationships at the outset of the freeze. *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 (2001), ¶ 21. Of the over 80 RoR study areas initially electing to use frozen category relationships, nearly half have since converted to price caps. This leaves 45 RoR carriers who continue to use frozen category relationships. Companies are also required under the rules to apportion costs in functional categories between the interstate and state jurisdictions. Factors used for this apportionment were required to be frozen for both price cap and RoR carriers in 2001 and remain frozen under current rules.

meet demands for advanced services, including broadband, they find themselves hindered by outdated cost categorizations. RLECs 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 ten years old.[10]

The Commission should accordingly include a "fresh look" categorization option for these RoR carriers during the upcoming separations freeze extension. 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 2011 cost studies. This option would be especially important for companies who elected to freeze category relationships in 2001, but subsequently made significant investments in plant that, absent the freeze, would recognize their substantial increase in investment in emerging services, such as broadband and Ethernet service. At a minimum, the Commission should permit those companies that elected to freeze their category relationships in 2001 the opportunity to unfreeze these relationships for the remainder of the extended freeze period.

III. CONCLUSION

The Associations support the Commission's proposal to extend the current separations freeze, but suggest that the freeze continue in effect for a one-year period after adoption of

[10] Last year the Commission granted Gila River Telecommunications, Inc. (GRTI) a waiver to unfreeze its category relationships, finding that relief of the frozen categorization requirement would enable GRTI to advance delivery of telecommunications services to Native Americans living in GRTI's rural Arizona service area. *Petition by Gila River Telecommunications, 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, 25 FCC Rcd 17459 (2010) (*Gila River Order*).

comprehensive ICC and USF reform rules. Additionally, the Commission should permit those few carriers who elected to freeze Part 36 category relationships in 2001 a one-time option to recalculate those relationships to reflect updated investment and expense levels.

Respectfully submitted,

March 28, 2011

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

By:

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

NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION
By: /s/ Jill Canfield
Jill Canfield
Senior Regulatory Counsel
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

ORGANIZATION FOR THE
PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS
COMPANIES
By: /a/ 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. 300C
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 28th day of March, 2011 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

Daniel Ball
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC. 20554
Daniel.Ball@fcc.gov

Nicholas A. Degani
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC. 20554
Nicholas.Degani@fcc.gov

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