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;
WESTERN TELECOMMUNICATIONS ALLIANCE; and
INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE

The Commission has requested comment on a proposal to extend, until June 30, 2014, 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,[2] support extension of the freeze until June 30, 2014, as

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[1] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking, FCC 11-34 (rel. Mar. 15, 2012) (*FNPRM*).

[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 460 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. ITTA is a trade association representing mid-size local exchange companies that provide a broad range of high

the Commission implements the intercarrier compensation (ICC) and universal service fund (USF) changes adopted in the *ICC/USF Transformation Order* as well as additional changes under consideration in the related *Further Notice of Proposed Rulemaking*.[3] This two-year period should provide adequate time for the Joint Board[4] and interested parties to determine how existing separations rules should be conformed to the new ICC and USF/Connect America Fund (CAF) rules.[5]

I. THE FREEZE SHOULD BE EXTENDED FOR A TWO-YEAR PERIOD DURING IMPLEMENTATION OF NEW ICC/USF RULES.

As the *FNPRM* itself points out, incumbent local exchange carriers (ILECs) have not been required to utilize the programs and expertise necessary to prepare separations studies since the inception of the freeze in 2001.[6] If current separations rules return to force, rural rate-of-return ILECs (RLECs) and smaller price cap ILECs would be required to incur substantial expense and time to reinstitute complex separations studies, at a time when many may not have

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quality wireline and wireless voice, broadband, Internet, and video services to more than 20 million access lines 44 states.

[3] *See, Connect America Fund,* WC Docket No. 10-90, *A National Broadband Plan for Our Future,* GN Docket No. 09-51, *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, *Universal Service – Mobility Fund,* WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*ICC/USF Transformation Order, Further Notice of Proposed Rulemaking*).

[4] *FNPRM*, ¶¶ 11-12 (The Joint Board has been reviewing issues related to reform of the jurisdictional separations process and is considering the impact of the Commission's comprehensive reform of the universal service and ICC systems on its analysis of the various approaches it has under consideration).

[5] The Associations previously recommended the Commission extend the separations freeze for at least a one-year period following the adoption of comprehensive ICC and USF reform rules. Comments of NECA, NTCA, OPASTCO, ERTA, and WTA, CC Docket No. 80-286, at 2 (Mar. 28, 2011).

[6] *FNPRM*, ¶ 13.

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 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 June 2012. Moreover, it would be wasteful to require these companies to devote scarce resources to comply with pre-2001 separations procedures, which have no relevance for price cap companies and will likely change substantially for RLECs due to the implementation of new ICC and USF/CAF rules.

The Commission has previously recognized that separations reform is inextricably intertwined with changes to ICC and USF rules.[7] 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"

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[7] *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.[8] Furthermore, the changes to these rules necessitated by revisions to ICC and USF rules will require additional evaluation to ensure the process continues to work for RLECs. A two-year extension will provide some stability for carriers during a period of great uncertainty and also allow both the Commission and Joint Board to focus on crafting appropriate separations reforms following the implementation of the Commission's *ICC/USF Transformation Order*.

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

While it would be reasonable to extend the freeze on traffic factor updates for an additional interim period, 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,

[8] *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.").

[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 RoR carriers to do so. Instead, the Commission provided 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.

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.[10]

Many RLECs have experienced significant changes in investment and service demand since category relationships were initially frozen. As these carriers upgrade their networks to 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.[11]

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 2012 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

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[10] *See also, Petition by Eastex Telephone Cooperative, Inc. For Waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships*, CC Docket No. 80-286, at 5 (filed May 25, 2011) (*Eastex Petition*).

[11] The Eastex Telephone Cooperative requested a permanent waiver of the Part 36 rules to entirely remove the category freeze so that it could properly allocate its costs. This would enable Eastex to receive additional (interstate pool) cost-based settlements to be used to continue expanding its network and enhancing broadband service to its subscribers, but without burdening the High-Cost program. *Id.* at 1, 9. In 2010, 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*).

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.

In addition, the Commission should consider giving carriers that did not elect to freeze their category relationships in 2000 the option to do so now, based on category relationships developed in 2011 cost studies. Permitting carriers to freeze category relationships could enable carriers to further reduce administrative expenses associated with cost studies, and would likely have minimal impacts on overall cost allocations given the planned two-year duration of the freeze extension.

III. CONCLUSION

The Associations support the Commission's proposal to extend the current separations freeze for two years. Additionally, the Commission should permit those few RoR carriers that elected to freeze their Part 36 category relationships in 2001 a one-time option to recalculate those relationships to reflect updated investment and expense levels.

Respectfully submitted,

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NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
By: /s/ Michael R. Romano
Michael R. Romano
Senior Vice President - Policy
Jill Canfield
Director, Legal and Industry
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.
By: /s/ Richard A. Askoff
Richard A. Askoff
Linda A. Rushnak
Its Attorneys
Teresa Evert, Senior Regulatory Manager
80 South Jefferson Road
Whippany, NJ 07981
(973) 884-8000

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

By: /s/ Gerard J. Duffy
Gerard J. Duffy
Regulatory Counsel
Blooston, Mordkofsky, Dickens, Duffy
& Prendergast, LLP
2120 L Street NW (Suite 300)
Washington, DC 20037
(202) 659-0830

INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE
By: /s/ Genevieve Morelli
Genevieve Morelli, President
Micah M. Caldwell, Vice President – Regulatory Affairs
1101 Vermont Ave., NW, Suite 501
Washington, D.C. 20005
(202) 898-1519

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

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 5th day of April, 2012, 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
Federal Communications Commission
445 12th Street, SW
Washington, DC. 20554
Daniel.Ball@fcc.gov

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