Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

TO: Federal-State Joint Board on Jurisdictional Separations

COMMENTS OF WTA – ADVOCATES FOR RURAL BROADBAND

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Summary

WTA – Advocates for Rural Broadband ("WTA") recognizes that substantial technological, economic and regulatory changes have taken place since the adoption of the current Part 36 separations rules and since the 2001 freeze of jurisdictional allocation factors and category relationships. However, WTA believes that the scope of the carriers, services and high-cost support mechanisms governed by Part 36 has narrowed so much during recent years that a significant overhaul of the separations rules is neither necessary nor cost-justified at this time. First, the price cap carriers are no longer subject to separations rules, while Alternative Connect America Cost Model ("ACAM") Path and Alaska Plan RLECs are subject to separations rules with respect to a much more limited range of their activities. Second, a major portion of incumbent local exchange carrier ("ILEC") industry services and revenues – interstate and intrastate terminating access and interstate originating access – is no longer governed by the separations rules. Third, broadband-only services and associated high-cost support mechanisms are wholly interstate, are expected to grow significantly in the future, and consequently are likely to reduce the need for separations procedures and separations reform. Finally, separations changes can have potential adverse impacts, both predictable and unforeseen, upon broadband deployment and adoption with respect to the RoR Path RLECs that remain subject to Part 36, and upon recently implemented modifications to the high cost support mechanisms and budget constraints for these RoR Path carriers.

Rather than major separations modifications, WTA believes that minor revisions and simplifications are more practicable and effective at this time. For example, some rules (such as Section 36.172 regarding Rural Telephone Bank stock) have become outmoded and can be deleted. Other rules (such as Sections 36.371 through 36.382 regarding Customer Operations

Expense) can be simplified via consolidation. Various text changes can be made to bring Part 36 up to date with changes to other Parts of the Rules (such as Part 32). Finally, RLECs that froze certain category relationships in 2001 should have a limited, one-time option to unfreeze one or more of such frozen relationships, and should be given the option: (a) to unfreeze the specified category relationships, use prescribed data from the preceding two-year interstate tariff period to calculate revised category relationships, and re-freeze the new calculated category relationships; or (b) to unfreeze the specified category relationships, and calculate the unfrozen category relationships going forward using the same types of studies and procedures employed by those RLECs that did not freeze their category relationships

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WTA – ADVOCATES FOR RURAL BROADBAND

WTA – Advocates for Rural Broadband ("WTA") hereby submits its comments in response to the Public Notice (*Federal-State Joint Board on Jurisdictional Separations Seeks to Refresh Record on Issues Related to Jurisdictional Separations*), CC Docket No. 80-286, FCC 17J-1, released April 24, 2017.

WTA recognizes that substantial technological, economic and regulatory changes have taken place and are continuing to take place in the telecommunications industry since the Part 36 separations rules were adopted and since the Part 36 jurisdictional allocation factors and category relationships (for some carriers) were frozen in 2001. However, given the significant and continuing decreases in the number of carriers subject to the separations rules and in the nature and extent of the services and support mechanisms covered by the separations process, it is not clear that the benefits of a substantial Part 36 overhaul at this time outweigh the costs likely to be incurred by the Federal Communications Commission ("FCC"), state commissions and carriers to develop, analyze and implement revised separations rules and studies. Moreover, separations changes can have adverse impacts, both predictable and unforeseen, upon the broadband deployment, rates and adoption the Rate-of-Return ("RoR) carriers still subject to Part

36 rules, and upon the recently implemented modifications to the high cost support mechanisms for RoR Path carriers.

WTA, therefore, advocates a limited and cautious approach to separations reform at this time. Whereas outdated or otherwise unnecessary separations rules and procedures can be eliminated or simplified and whereas carriers should be given an option to unfreeze some currently frozen category relationships, a large-scale overhaul of the Part 36 rules is not needed at this time. Rather, federal and state regulators should monitor the impacts of recent intercarrier compensation and universal service reforms upon broadband deployment, pricing and adoption, and not undertake significant separations revisions until they are better able to gauge the impact of such changes upon the evolving broadband networks and services that are increasingly important to national, state and local economies.

I. WTA – Advocates for Rural Broadband

WTA is a national trade association representing more than 325 rural telecommunications providers offering voice, broadband and video-related services in Rural America. WTA members are generally small rural incumbent local exchange carriers ("RLECs") that serve some of the most rugged, remote and/or sparsely populated areas of the United States. They are providers of last resort to many areas and communities that are both very difficult and very expensive to serve.

The typical WTA member has 10-to-20 full-time employees, and serves fewer than 3,500 access lines in the aggregate and fewer than 500 access lines per exchange. Given that the Part 36 jurisdictional allocation factors and category relationships (for some carriers) have been frozen since 2001, relatively few WTA members and other RLECs have employees that are

familiar with separations procedures and rules. Rather, most will have to engage consultants to analyze and calculate the impact upon their operations of any significant separations rule changes that might ultimately be adopted in this proceeding.

WTA members are all RoR carriers. Approximately forty-five percent (45%) of WTA's members are included among the 207 RoR companies that have elected to receive federal high-cost Universal Service Fund ("USF") support for the next ten years pursuant to the Alternative Connect America Cost Model ("ACAM") Path.[1] With the exception of several Alaska Plan companies, the rest of WTA's members have remained on the RoR Path.

II. The Part 36 Separations Process

Jurisdictional separations is the process by which incumbent local exchange carriers ("ILECs") apportion the costs of regulated local exchange and access services between the intrastate and interstate jurisdictions. It has traditionally been the third step of a four-step regulatory process that begins with the recording of costs such as investments and expenses into ILEC accounting systems in accordance with the Uniform System of Accounts (Part 32 of the FCC Rules), proceeds through the assignment of these costs to regulated and nonregulated activities (Part 64 of the FCC Rules), and then after completion of the separations process (Part 36 of the FCC Rules) apportions the interstate regulated costs among the interexchange services and rate elements that form the cost basis for interstate access tariffs (Part 69 of the FCC Rules). The intrastate portions of the separated regulated costs are primarily recovered in local exchange

[1] See Public Notice (*Wireline Competition Bureau Authorizes 35 Rate-of-Return Companies to Receive More Than $51 Million Annually in Alternative Connect America Cost Model Support And Announces Offers of Revised A-CAM Support Amounts to 191 Rate-of-Return Companies to Expand Rural Broadband*), WC Docket No. 10-90, DA 16-1422, released December 20, 2016; and Public Notice (*Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive $454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*), WC Docket No. 10-90, DA 17-99, released January 24, 2017.

service rates and intrastate access rates. In the interstate jurisdiction, separated regulated costs also impact the calculation of various universal service support mechanisms. In the intrastate jurisdiction, separated regulated costs may also impact intrastate universal service support mechanisms.

Most of the current Part 36 jurisdictional separations rules were adopted and implemented by the FCC in consultation with the Joint Board during the period between the 1984 Bell System break-up and the Telecommunications Act of 1996. In 1997, the FCC initiated a Joint Board proceeding to determine the extent to which legislative, technological and market changes warranted comprehensive reform of the separations process.[2] In July 2000, the Joint Board issued a recommended decision for an interim freeze of Part 36 category relationships and jurisdictional allocation factors for price cap carriers, and an interim freeze of jurisdictional allocation factors only for rate-of-return carriers, until comprehensive separations reform could be achieved.[3] The FCC adopted the Joint Board recommendation for an interim freeze in 2001, setting the initial freeze period of five years and adding an option for RoR carriers to freeze their Part 36 category relationships at the outset of the freeze.[4] This 2001 interim freeze has been extended several times, and has recently been extended through December 31, 2018.[5]

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[2] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, Notice of Proposed Rulemaking, CC Docket No. 80-286, 12 FCC Rcd 22120 (1997).
[3] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, Recommended Decision, CC Docket No. 80-286, 15 FCC Rcd 13160 (Fed-State Jt. Bd. 2000).
[4] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, Report and Order, CC Docket No. 80-286, 16 FCC Rcd 11382 (2001).
[5] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, Report and Order, CC Docket No. 80-286, FCC 17-55, released May 15, 2017.

III. The Scope of the Part 36 Separations Rules Has Narrowed Significantly

The technology, economics and regulation of the telecommunications industry has changed significantly since the existing separations rules were adopted, as well as since the jurisdictional allocation factors and category relationships were frozen in 2001. A result of these changes has been to narrow the range of the carriers subject to the Part 36 separations rules primarily to the RLECs remaining on the RoR Path (with some residual impact upon ACAM Path and Alaska Plan RLECs), and to limit the services and mechanisms governed by the separation rules primarily to local exchange services, intrastate originating access services, special access services and RoR Path high-cost support mechanisms.

It does not appear that price cap carriers are significantly affected by the existing Part 36 separations rules or freeze, or that they will be significantly impacted by any revisions thereto. During 2008, the FCC granted forbearance from its Part 36 separations rules to the then three largest price cap carriers: AT&T, Verizon and Qwest.[6] In 2011, the interstate and intrastate terminating switched access and reciprocal compensation charges of price cap carriers were placed upon a six-year transition path to bill-and-keep arrangements.[7] During 2015 and 2016, the FCC began implementing the Connect America Fund Phase II ("CAF Phase II") mechanism for price cap carriers that elected model-based high cost support on a state-wide basis, and began preparing to conduct reverse auctions for price cap service areas for which model-based support

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[6] *Petition of AT&T for Forbearance Under 47 U.S.C. §160 from Enforcement of Certain of the Commission's Cost Allocation Rules,* WC Docket Nos. 07-21 and 05-342, 23 FCC Rcd 7302 (2008); and *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. §160(c),* WC Docket Nos. 07-204 and 07-273, 23 FCC Rcd 13647 (2008).

[7] *In the Matter of Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking. WC Docket Nos. 10-90, 07-135, 05-337 and 03-109, CC Docket Nos. 01-92 and 96-45, GN Docket No. 05-91 and WT Docket No. 10-208, 26 FCC Rcd 17,663 (2011), *aff'd sub nom. In re FCC 11-161*, 753 F 3d 1015 (10th Cir. 2014) ("*USF-ICC Transformation Order*").

had not been elected.[8] For both model-based support areas and reverse auction areas, future federal high-cost support for price cap carriers and for those receiving reverse auction support for former price cap service areas will not be based upon costs derived via the Part 32-Part 64-Part 36 process. Finally, the FCC has recently allowed price cap carriers to use generally accepted accounting principles ("GAAP") rather than the Part 32 Uniform System of Accounts for all regulatory accounting purposes.[9] Whereas it may be theoretically possible to perform Part 36 separations on GAAP costs, this recent FCC order appears to break the direct links and references between Part 32 and Part 36 for price cap carriers.

The 207 RoR carriers that have accepted model-based support on the ACAM Path will receive specific amounts of federal high-cost support during the 2017-2026 period that is not based upon Part 32 accounts or Part 64 and Part 36 costs.[10] Likewise, the 13 Alaska RoR carriers that elected to receive frozen federal high cost support at 2011 levels for a 10-year term will also receive support that is not based upon ongoing Part 64 and Part 36 costs.[11]

Moreover, since 2011, all RoR carriers have had their interstate and intrastate terminating switched access and reciprocal compensation rates placed on a nine-year transition path to bill-and-keep arrangements.[12] In addition, the FCC's 2011 *USF-ICC Transformation Order* capped interstate originating access rates for RoR carriers. In other words, neither interstate nor

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[8] See, *e.g.*, Public Notice (*Wireline Competition Bureau Addresses Transition to Model-Based Support for Carriers that Accepted the Offer of Phase II Connect America Fund Support*), WC Docket No. 10-90, DA 15-981, released August 31, 2015.

[9] *In the Matter of Comprehensive Review of the Part 32 Uniform System of Accounts*, Report and Order, WC Docket No. 14-130 and CC Docket No. 80-286, FCC 17-15, released February 24, 2017.

[10] *In the Matter of Connect America Fund et al,*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 and 14-58 and CC Docket No. 01-92, FCC 16-33, released March 30, 2016.

[11] Public Notice (*Wireline Competition Bureau Authorizes Alaska Plan Support for 13 Alaskan Rate-of-Return Companies*), WC Docket Nos. 10-90 and 16-271, released December 21, 2016.

[12] *USF-ICC Transformation Order, supra.*

intrastate terminating switched access charges, nor interstate originating switched access charges, are any longer subject to the Part 32-Part 64-Part 36–Part 69 process.

In sum, it would appear that the primary remaining impact of the Part 36 separations rules is focused upon the local exchange, intrastate originating access and special access services of RoR carriers, and upon the high-cost support of RoR Path carriers. And if, as expected, the establishment of the new Consumer Broadband-Only Loop Service results in an increased migration of RLEC customers from voice and bundled voice/broadband services (which operate in both the interstate and intrastate jurisdictions) to broadband-only services (which are 100 percent interstate), the scope of Part 36 separations procedures will narrow further.

Finally, WTA notes that special access has become a predominately interstate service for both price cap and RoR carriers since the "10 percent contamination rule" was adopted by the FCC in 1989.[13] That rule indicates that if 10 percent or more of the traffic on a special access circuit is interstate, the circuit is classified as 100 percent interstate and directly assigned to the interstate jurisdiction, whereas if less than 10 percent of the traffic on a special access circuit is interstate, the circuit is classified as 100 percent intrastate and directly assigned to the intrastate jurisdiction[14] It is WTA's information and belief that approximately 80 to 90 percent of special access facilities and revenues are assigned to the interstate jurisdiction.

IV. Minor Revisions and Simplifications of the Part 36 Separations Rules Are More Prudent and Practicable Than Comprehensive Overhaul at This Time

Given the exit of price cap carriers, most switched access services, and ACAM Path and Alaska Plan support mechanisms from the coverage of the separations rules, it appears that the

[13] *MTS and WATS Market Structure, Amendment f Part 36 of the Commission's Rules and Establishment of a Joint Board*, Decision and Order, CC Docket Nos. 78-72 and 80-286, 4 FCC Rcd 5660 (1989).
[14] See also 47 C.F.R. §36.154(a) (private lines and WATS lines treated as subcategory 1.1 if less than 10% interstate traffic, and otherwise treated as subcategory 1.2).

primary impact of separations reform or changes would be upon the high cost support, intrastate revenue requirements (local exchange service and intrastate originating access) and special access services of the RLECs remaining on the RoR Path (with some lesser impacts upon the intrastate revenue requirements and special access services of the ACAM Path and Alaska Plan carriers). In light of this greatly circumscribed scope of separations, it does not appear that the benefits of a substantial Part 36 overhaul at this time outweigh the costs that would be incurred by the FCC, state commissions, RLECs and others to develop, analyze and implement revised separations rules and studies. Moreover, separations changes possess a significant potential to disrupt or undermine the high cost support reforms and other initiatives that the FCC has recently taken to increase broadband deployment, broadband service quality and broadband adoption in rural areas.

This is because the major impact of potential Part 36 changes is likely to fall upon the high cost support, broadband deployment, broadband rates and broadband adoption of RoR Path carriers. For example, proposals to assign Category 1 Cable and Wire Facilities ("C&WF") investment to multiple subcategories and to increase the interstate jurisdiction factor for a bundled voice and data subcategory (for example, from 25 percent to 50 percent) are likely to have disruptive impacts upon RoR Path high cost support. The doubling of the C&WF costs that are assigned to the interstate jurisdiction for bundled voice/data services would significantly increase the calculated interstate Connect America Fund – Broadband Loop Service – Voice support (formerly, ICLS) for RoR Path carriers, but would also increase the size of the support reduction "haircuts" required by the budget control mechanisms of Sections 54.901(f) and 54.1310(d) of the FCC Rules. Because these impacts are likely to fall differently upon various individual carriers, they are likely to create "winners" and "losers" that will cause substantial

uncertainty and funding problems that can disrupt implementation of the recently modified RoR Path support mechanisms and build-out obligations. Moreover, C&WF costs that cannot be recovered from high cost support due to jurisdictional shifts and budget constraints will have to be recovered from increased broadband rates, thereby further discouraging broadband adoption and use.

Similar proposals for increased interstate jurisdiction factors for C&WF investment subcategories used for bundled voice-video services (for example, from 25 percent to 70 percent) and/or for bundled voice-data-video services (for example, from 25 percent to 90 percent) pose the threat of dire impacts upon RLEC-provided broadband and video services in rural areas. As the FCC is aware, WTA members and other RLEC providers of cable television ("CATV") and Internet Protocol television ("IPTV") services are providing video services to their rural customers at a loss or (at best) on a break-even basis because skyrocketing retransmission consent fees and satellite programming costs have destroyed profit margins and forced repeated rate increases that have driven away more and more rural customers as monthly rates became less and less affordable.. During recent years, several WTA members have been forced to terminate their CATV or IPTV services because they could neither increase their video rates enough nor sustain continuing losses on their video services. If RoR Path carriers are required by separations changes to allocate more of the costs of their C&WF investments to their video services and to recover these increased costs by further increasing their already high video service rates, they will encounter stiff resistance from remaining video customers that are unable or unwilling to bear further rate hikes. The most likely solution for many RLECs will be to exit the video business, and the trickle of WTA members and other RLECs recently discontinuing their rural video services is likely to become a flood.

WTA notes that many industry observers expect RLEC customers increasingly to drop their Time Division Management ("TDM") voice services, and to migrate to broadband-only services. Given that broadband-only services are wholly interstate services, their associated investment and operating costs will be directly and entirely assigned to the interstate jurisdiction under current separations rules. To the extent that this evolution takes place, the need for and scope of separations reform will be reduced.

WTA understands that state commissions have been concerned with distortions caused by large price cap company freezes of their category relationships and cessation of direct assignment studies after the 2001 freeze, resulting in a substantial disadvantage to intrastate special access rates and earnings as interstate and intrastate special access costs remained relatively constant while interstate special access services garnered most of the increased special access revenues. However, it is not clear what can be done at this time with respect to Part 36 to address this problem, because AT&T and Verizon have had specific forbearance relief from Part 36 requirements since 2008, and because price cap carriers have little or no remaining involvement with the Part 32-Part 64-Part 36-Part 69 process. To the extent, if any, that the "10 percent contamination rule" continues to apply to price cap carriers, would not the direct assignment of investment costs, operating costs and revenues for "interstate" and "intrastate" special access lines resolve any remaining problems, without the need for extensive Part 36 changes?

WTA reiterates its understanding that there have been substantial technological, economic and regulatory changes since the existing Part 36 rules were adopted and since the 2001 freeze. Some rules – for example, Section 36.172 regarding Rural Telephone Bank stock – have become outmoded, and can be eliminated. Other rules – for example, Sections 36.371

through 36.382 regarding Customer Operations Expense – can be simplified, perhaps by consolidation into two categories (e.g., Carrier Access Billing and Collection; and Other). And various textual changes can be made to the Part 36 rules in order to reflect and conform to recent changes to Part 32 and other rule sections.

Finally, WTA proposes that RLECs that elected to freeze certain category relationships in response to the 2001 freeze should have a limited, one-time option to unfreeze them. For example, as marketing and adoption of broadband-only services increases, more marketing and customer service costs should be assigned to the revenue requirements for these broadband-only services and to the Connect America Fund – Broadband Loop Service ("CAF-BLS") mechanism. However, this cannot be done if certain category relationships were frozen in 2001 unless and until such category relationships are unfrozen. Hence, WTA proposes that those RLECs that elected to freeze certain category relationships in 2001 be given the option until a date certain to notify the FCC and their state commission that they intend to unfreeze one or more specified frozen category relationships.[15] WTA recommends that those carriers electing to unfreeze be given the further option to: (a) unfreeze the specified category relationships, use prescribed data from the preceding two-year interstate tariff period to calculate revised category relationships, and re-freeze the newly calculated category relationships; or (b) unfreeze the specified category relationships, and calculate the unfrozen category relationships going forward using the same types of studies and procedures employed by those RLECs that did not elect to freeze their category relationships in 2001.

[15] Such notifications should be coordinated with tariff adjustments, so as to assure that rates reflect any resulting changes in interstate cost assignments.

V. Conclusion

Substantial technological, economic and regulatory changes have been taking place since the Part 36 separations rules were adopted and since jurisdictional allocation factors and category relationships were frozen in 2001. However, WTA does not believe that a significant Part 36 overhaul is either necessary or cost-justified at this time. First, the price cap carriers are no longer subject to separations rules, while ACAM Path and Alaska Plan RLECs are subject with respect to a much narrower scope of their activities. Second, a major portion of ILEC industry services and revenues – interstate and intrastate terminating access and interstate originating access – is no longer governed by the separations rules. Third, broadband-only services and associated high-cost support mechanisms are wholly interstate, are expected to grow significantly in the future and consequently are likely to reduce the need for separations procedures and separations reform. Finally, separations changes can have potential adverse impacts, both predictable and unforeseen, upon broadband deployment, rates and adoption with respect to the RoR Path RLECs that remain subject to Part 36, and upon recently implemented modifications to the high cost support mechanisms and budget constraints for these RoR Path carriers.

Rather than major separations revisions, WTA believes that minor revisions and simplifications are more practicable and effective at this time. For example, some rules (such as Section 36.172 regarding Rural Telephone Bank stock) have become outmoded and can be deleted. Other rules (such as Sections 36.371 through 36.382 regarding Customer Operations Expense) can be simplified via consolidation. Various text changes can be made to bring Part 36 up to date with changes to other Parts of the Rules (such as Part 32). Finally, RLECs that froze certain category relationships in 2001 should have a limited, one-time option to unfreeze one or

more of such frozen relationships, and should be given the option: (a) to unfreeze the specified category relationships, use prescribed data from the preceding two-year interstate tariff period to calculate revised category relationships, and re-freeze the calculated category relationships; or (b) to unfreeze the specified category relationships, and calculate the unfrozen category relationships going forward using the same types of studies and procedures employed by those RLECs that did not freeze their category relationships in 2001.

Respectfully submitted,
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