

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

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

TO: The Commission

**COMMENTS
OF
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (“WTA”) hereby submits its comments in response to the *Further Notice of Proposed Rulemaking*, FCC 18-99, released July 18, 2018, in the captioned proceeding (“*FNPRM*”). These comments are filed in accordance with the schedule established in 83 Fed. Reg. 35582 (July 27, 2018).

WTA, a national trade association representing more than 340 rural telecommunications providers offering voice, broadband and video-related services,¹ supports the Commission’s proposed 15-year extension until December 31, 2033, of the existing freeze of Part 36 jurisdictional allocation factors for rate-of-return (“RoR”) carriers. WTA also asks the Commission to allow RoR carriers to improve the accuracy of their cost allocations while controlling their regulatory compliance costs by: (1) offering a one-time option to those RoR carriers that elected to freeze their category relationships in 2001 to unfreeze them as of a specified date; and (2) offering another one-time option to all RoR carriers – both those that accept the option to unfreeze their 2001 category relationships and those that have not previously

¹WTA members are all Rate-of-Return (“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. With the exception of several Alaska Plan companies, the rest of WTA’s members have remained on the Cost-Based Rate-of-Return Path (“RoR Path”).

frozen their category relationships – to freeze their recent category relationships as of a specified date.

Extension of Current Separations Freeze

WTA agrees with the Commission that comprehensive separations reform is impossible to achieve before the current freeze of jurisdictional allocation factors expires on December 31, 2018, and that allowing the largely outmoded jurisdictional allocation rules to be reinstated at that time would impose significant burdens on rate-of-return carriers and create undue instability. *FNPRM* at ¶¶17-18.

Given that the Part 36 jurisdictional allocation factors have been frozen since 2001, very few WTA members and other RLECs have employees that have remained familiar with the pre-2001 separations process. In fact, throughout the telecommunications industry, many local exchange carriers, consulting firms and regulatory agencies no longer have many or any employees familiar with traditional separations procedures and rules, as 17 years of retirements and industry changes since the inception of the 2001 freeze have significantly reduced the availability and need for such expertise. Hence, even if the pre-2001 jurisdictional allocation rules had remained fully relevant with respect to the 2018 telecommunications industry, the costs of re-educating and re-training industry and regulatory personnel would be substantial.

Moreover, since imposition of the 2001 freeze, the scope and potential benefits of the separations process have decreased substantially. For example, the Commission has repeatedly reduced the applicability of the separations process, including: (1) grants of forbearance from Part 36 separations rules to price cap carriers in 2008 and 2013²; (2) adoption of rate caps and a

² *Petition of AT&T Inc. for Forbearance under 47 U.S.C. §160 from Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket Nos. 07-21, 05-342; Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008); *Petition of USTelecom for Forbearance Under 47 U.S.C. §160 from Enforcement of Certain Legacy Telecommunications Regulations et al.*, WC Docket No. 12-61 *et al.*, Memorandum Opinion and Order and Report

transition to bill-and-keep for certain switched access services of RoR carriers in 2011³; and (3) adoption and implementation of a voluntary Alternative Connect America Cost Model (“ACAM”) for the calculation of federal high-cost support for some RoR carriers in 2016.⁴ As a result, the scope of the separations process has been reduced to the calculation of: (a) special access rates for RoR carriers; (b) interstate common line support for cost-based RoR carriers; and (c) subscriber line charges (SLCs) for a small number of RoR carriers. Further technological, economic and regulatory changes during the next 5, 10 and 15 years are very likely to change, and perhaps continue to further reduce or eliminate, the relevance of and need for jurisdictional separations processes and rules.

WTA agrees that fifteen years is a reasonable period for the additional proposed extension of the jurisdictional allocation factors freeze. Rather than devoting substantial Commission, state and RLEC resources to the development of revised jurisdictional separations procedures that may soon become outmoded due to continuing industry changes, WTA believes that a 15-year extension will give the Commission, state commissions and the RLEC industry time to determine what, if any, revised separations rules will be necessary and sufficient for the Internet Protocol or other network that evolves into the future public communications network.

One Time Options To Unfreeze and Freeze Category Relationships

WTA believes that the Commission can and should upgrade the accuracy of RLEC cost allocations while controlling regulatory compliance costs by allowing one-time options to unfreeze and/or re-freeze/freeze Part 36 category relationships. Specifically, those 45 or so

and Order and Further Notice of Proposed Rulemaking and Second Further Notice Of Proposed Rulemaking, 26 FCC Rcd 7627 (2013).

³ *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011).

⁴ *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016).

RLEC study areas that elected to freeze category relationships in 2001 should have a one-time option to: (a) make no change in their existing frozen category relationships; (b) unfreeze their existing category relationships as of a specified date (*e.g.*, July 1, 2019), calculate revised category relationships by using prescribed data from their most recent annual interstate access charge tariff filing or (if issuing carriers in the National Exchange Carrier Association (“NECA”) interstate access charge tariff) the most recent true-up of the prescribed data that they have provided to NECA, and re-freeze their re-calculated category relationships as of the same specified date; or (c) unfreeze their existing category relationships as of the same specified date (*e.g.*, July 1, 2019) and calculate their unfrozen category relationships going forward using the same types of studies and procedures employed by those RLEC study areas that did not freeze their category relationships in 2001. In addition, those RLEC study areas that did not elect to freeze their category relationships in 2001 should have a one-time option to freeze their category relationships as of the same specified date (*e.g.*, July 1, 2019) by using the same process as those RLECs electing to re-freeze their category relationships – specifically, by calculating their frozen category relationships using the same types of prescribed data from their most recent annual interstate access charge tariff filing or (if issuing carriers in the NECA interstate access charge tariff) from the most recent true-up of that data that they have provided to NECA.

WTA emphasizes that these one-time unfreeze/re-freeze/freeze options should be wholly voluntary. For example, some of the very small RLEC study areas that froze their category relationships in 2001 have made long-term business and investment decisions based in significant part on their frozen allocation factors and the revenue streams they impact. These small carriers generally lack the financial resources and economies of scale to make substantial changes in their business and investment plans once they are put into motion. Moreover, in a

small study area, the per-customer costs of the studies needed to unfreeze and refreeze category relationships can outweigh any gains in the accuracy of cost allocations and any changes in the resulting rates.

WTA believes that the unfreeze/re-freeze/freeze options should all be one-time opportunities wherein each RLEC study area exercising one or more of the options must notify the Commission, its state commission and NECA by a date certain (e.g., March 1, 2019) that it will be exercising one or more of the specified options, and wherein each unfreeze, re-freeze or initial freeze action must be effective as of a date certain (e.g., July 1, 2019). Common notification and effective dates make the process simple and straightforward, and let all interested industry participants and regulators know at an early date the size and scope of the category relationship changes involved. A single common notice and effective date also requires prompt analysis and decisions by affected RLECs, and avoids complications and delays arising from uncertainties as to whether there might be more favorable times to unfreeze and re-freeze some or all category relationships.

WTA believes that any re-freezes or initial freezes of category relationships should be based upon recent relevant category relationship data that is complete and no longer subject to true-up. For example, the Commission could require all re-frozen and initial frozen category relationships to be based upon prescribed data from the carrier's most recent annual interstate access charge tariff filing or (if the carrier is an issuing carrier in the NECA interstate access charge tariff) from the most recent true-up of the prescribed data that the carrier has provided to NECA. The stipulation of a definitive period or filing makes it clear and straightforward for RLECs how to calculate their future frozen category relationships, and to decide whether they are reasonable. The use of the most recent completed and filed set of data will improve the

accuracy of the recalculated category relationships, make it easy for federal and state regulators to check the accuracy of data and calculations, and provide regulators with assurance that it was not possible for any electing RLECs to time expenditures to create more favorable category relationships.

If the Commission determines that it needs to address potential double recovery issues with respect to those RLECs that elect to unfreeze the category relationships that they previously froze in 2001, WTA believes that approach adopted in the *Eastex Waiver Order*⁵ should be adopted. Specifically, the Commission could require those RLEC study areas electing the unfreeze option to use 2011 cost study data to recalculate their 2011 Rate-of-Return Carrier Base Period Revenue using actual, unfrozen categories and to file a revised interstate switched access revenue requirement. WTA emphasizes that any such process must be specific, unambiguous and straightforward so that RLECs contemplating the unfreezing option can readily and accurately determine the impact thereof.

WTA expects that the unfreezing of 2001 category relationships will result in a shifting of costs in most affected study areas from intrastate to interstate, and from common line to special access. For example, if the marketing and adoption of broadband-only services has increased in study areas where category relationships have been frozen since 2001, unfreezing would allow more marketing and customer service costs to be assigned to the revenue requirements for these broadband-only services and to the Connect America Fund – Broadband Loop Service (“CAF-BLS”) mechanism. However, until WTA knows how many of the 45 or so study areas with frozen category relationships will be electing to unfreeze them, it cannot estimate the total impacts upon service rates and high-cost support.

⁵ *Petition by Eastex Telephone Cooperative, 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, 27 FCC Rcd 6357 (WCB 2012).

Finally, WTA proposes that RLEC study areas that did not elect to freeze their category relationships in 2001 be given a one-time opportunity to freeze them at this time. As indicated above, WTA proposes that these initial freezes be subject to the same notice date, effective date and data period requirements as those electing to unfreeze and re-freeze. Freezing category relationships would appear to benefit both small RLECs and the public interest, particularly in cases where the RLEC's study area has transitioned most or all of the way from legacy voice service to broadband service. Freezing category relationships during the later stages of an RLEC's broadband transition would mean that such relationships would remain substantially accurate during the foreseeable future, while their freezing would reduce the RLEC's regulatory costs and free up more of its scarce resources for broadband deployment and service upgrades.

Conclusion

WTA supports the proposed 15-year extension until December 31, 2033, of the existing freeze of Part 36 jurisdictional allocation factors for RoR carriers. WTA also supports a one-time option to those RoR carriers that elected to freeze their category relationships in 2001 to unfreeze them as of a specified date, and another one-time option for all RoR carriers – both those that accept the option to unfreeze their 2001 category relationships and those that have not previously frozen their category relationships – to freeze their category relationships as of a specified date.

Respectfully submitted,
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