Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Jurisdictional Separations and Referral to the Federal-State Joint Board	)	CC Docket 80-286
	)	

COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these comments in response to the Further Notice of Proposed Rulemaking ("FNPRM") recently released by the Federal Communications Commission (the "Commission") in the above-referenced proceeding.[2] The FNPRM seeks comment on: (1) a proposal to extend the existing short-term jurisdictional separations freeze for 15 years; (2) whether the Commission should alter the scope of its referral to the Federal-State Joint Board on Separations ("Joint Board"); and (3) a proposal to allow RLECs that elected to freeze their category relationships in 2001 a chance to opt out of that freeze. For the reasons set forth herein, NTCA encourages the Commission to adopt the specific proposals set forth in the FNPRM. NTCA further supports replacing a sweeping referral to the Joint Board related to comprehensive separations reform with a more targeted approach that will address discrete questions presented as the communications marketplace continues to evolve and separations results correspondingly continue to diminish in regulatory significance.

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[1] NTCA represents more than 800 independent, community-based telecommunications companies. All NTCA members remain rate-of-return-regulated local exchange carriers ("RLECs") for at least some portion of their operations, all provide fixed broadband services, and many provide mobile voice and broadband, video, and other advanced services to their communities.

[2] *Federal-State Joint Board on Jurisdictional Separations Seeks to Refresh the Record on Issues Related to Jurisdictional Separations*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking (rel. July 18, 2018).

The communications marketplace continues to evolve in ways barely imaginable when separations rules were first developed. The transition to increasingly Internet Protocol ("IP") enabled services, facilitated by an underlying foundation of broadband-capable networks, is continuing apace. Of greatest relevance to the instant proceeding, however, such technology transitions and consumer demands for new services have the effect of effectuating market-driven separations shifts without need for further regulatory intervention. For example, current separations rules assign 75 percent of the costs of a voice-only telephone line or a voice/data line to the intrastate jurisdiction. Yet once a customer ceases to procure a traditional voice line and opts instead for standalone broadband, 100 percent of the costs of that line are assigned to the interstate jurisdiction under current rules. Similarly, as consumers increasingly elect VoIP services as replacements for a traditional telephone lines, this too has the effect of shifting additional costs to the interstate jurisdiction. Thus, the underlying separations treatment of networks and services is transitioning "organically" by virtue of technological transition and consumer demand – leaving no need for sweeping and intrusive regulatory intervention to adjust the separations framework itself.

In fact, significant revisions now to the existing separations framework risk only disrupting or undermining, rather than furthering, this marketplace-driven transition. This ongoing evolution rests precariously atop the current separations foundation; investments are being made and services delivered based upon the current framework, and recent reforms to key ratemaking and cost recovery mechanisms are predicated upon and built atop this foundation as well. For example, the Commission revised its high-cost universal service rules in 2016 to provide support for the first

time for consumers electing to procure "broadband-only" services from RLECs.[3] While more work is needed (and underway) to ensure that this new mechanism is successful and sufficiently funded to make such a service reasonably comparable in price and speed for rural and urban consumers alike,[4] it sets in motion the prospect for increased consumer adoption of standalone broadband services – *the costs of which are assigned entirely to the interstate jurisdiction*. Likewise, under the Commission's intercarrier compensation reforms, interstate and intrastate switched access rates alike are transitioning downward,[5] with such revenues replaced through an interstate recovery mechanism.[6] Finally, as some RLECs have migrated toward incentive regulation through cost models that substitute for common line cost recovery,[7] through the intercarrier compensation transition described above, and with the potential for revisions that would allow some RLEC to elect incentive regulation in the context of special access pricing too,[8] there are fewer and fewer regulatory ratemaking and cost recovery constructs in which separations treatment plays a significant part. Pulling apart the existing threads now through sweeping comprehensive separations reform would therefore only create new regulatory uncertainty and

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[3] *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, 3120-3125 (2016) ("2016 Order"), at ¶¶ 86-94.

[4] *See Connect America Fund*, *et al.*, WC Docket No. 10-90, *et al*., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking (rel. March 23, 2018).

[5] *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, 17934-95 (2011), at Figure 9.

[6] *Id*. at 17957-17961, ¶¶ 847-853.

[7] 2016 Order, 31 FCC Rcd at 3097-3018, ¶¶ 20-79.

[8] *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket No. 17-144, Notice of Proposed Rulemaking, (rel. Apr. 18, 2018).

possibly deter investment in advanced networks and services by destabilizing essential cost recovery mechanisms recently remade with an opposite aim in mind.

Any benefit to be gained from remaking the existing separations framework must also be weighed against the burdens that would arise out of separations reform. Comprehensive separations reform would hit hardest those small businesses already stretched thin by regulatory compliance, adjustments to reformed mechanisms, and the need to operate under insufficient universal service support budgets.[9] In the face of such existing challenges, these smaller providers would be forced to return to a regulatory environment that last operated in full nearly two decades ago, necessitating the hiring or retraining of staff – assuming expertise can even be found to do so – and revising of internal procedures in ways that could overwhelm their operations.

For these reasons, NTCA supports the proposal in the FNPRM to extend the separations freeze for 15 years.[10] It is for these reasons too that NTCA supports narrowing the scope of any referral to the Joint Board, migrating from a broad request to consider comprehensive reform to more targeted referrals as necessary to consider discrete issues that may arise and require resolution while the framework otherwise remains "frozen" in current form.[11] The 15-year period represents a reasonable timeframe within which to allow very recent universal service reforms that have yet to be implemented successfully or entirely to take root and function,[12] and to examine further

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[9] *See* Comments of NTCA, National Broadband Agenda, Docket No. 160831803-6803-01 (Oct. 11, 2016), available at https://www.ntia.doc.gov/files/ntia/publications/ntca.pdf (identifying time devoted annually to RLEC regulatory and cost data reports, including an average of 239 hours per company for separations cost study preparation even under the existing frozen rules).

[10] FNPRM at ¶ 20.

[11] *Id*. at ¶ 22.

[12] It is for this reason also that NTCA argues that the contemplated transition would neither distort rate levels nor run afoul of the Section 201(b) prohibition on unjust and unreasonable charges. FNPRM at ¶¶ 20-21. The existing cost recovery mechanisms, as relatively recently reformed, are aimed at promoting reasonably comparable rates and contain bounds within which such rates are to be set. If anything, upsetting

evolution in the communications marketplace. Indeed, during or at least by the end of that period, in light of the technological transitions and consumer-driven shifts described above, it is quite possible that any remaining separations concerns may have "resolved themselves" in terms of the number of carriers subject to such treatment and the services and networks – and ultimately, the customers – affected. By contrast, a shorter-term separations "freeze" is likely only to yield many of the same questions upon expiration as recent short-term "freezes" have, initiating unnecessary and repetitive regulatory process and fostering uncertainty that undermines, rather than furthers, the Commission's objectives. Instead, if a clear need arises to address a specific concern related to the existing separations framework during the pendency of this longer-term freeze, a referral can certainly made to the Joint Board at that point to examine and resolve that discrete concern.

Finally, NTCA supports the Commission's proposal to allow a limited, one-time opportunity for RLECs that opted to freeze their category relationships in 2011 to opt out of that freeze, so that they can categorize their costs based upon current circumstances rather than circumstances when they first elected that kind of freeze.[13] This particular aspect of the freeze can hinder investment and the offering of newer services, as carriers refrain from doing so for fear of being unable to recover the costs of such efforts.[14] For these carriers uniquely, the shifts noted above in terms of technological evolution and consumer demand are *not* carrying out separations shifts "organically." Rather, even as shifts in consumer usage of interstate services are taking

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the separations "apple cart" now might only frustrate, rather than advance, efforts to ensure just and reasonable rates for services; put another way, if the Commission revises its separations mechanisms, it will need to make a series of corresponding and complex changes to a variety of ratemaking and cost recovery mechanisms predicated upon the current framework to address the resulting shifts in costs.

[13] FNPRM at ¶ 23.

[14] *See, e.g.*, *Ex Parte* Letter from Michael R. Romano, Sr. Vice President, NTCA, to Marlene H. Dortch, Secretary, Commission, CC Docket No. 80-286 and WC Docket No. 16-66 (filed Aug. 17, 2018).

place, the frozen categorization factors preclude assignment of costs to certain interstate categories. Unlike more wide-ranging separations reform, this represents a simple, straightforward exercise to recalibrate (but not upend) the separations framework for companies for whom the frozen categories are extremely outdated – and making such an opportunity available should better enable those companies to invest and/or offer new services such as standalone broadband over networks in which they have already invested.

The Commission further inquires in the FNPRM what effects such an opportunity to "unfreeze" categories may have on universal service support, such as Connect America Fund-Intercarrier Compensation ("CAF-ICC"). To minimize the impact on other operators and avoid the prospect of potential double recovery of costs while providing a straightforward means of calculating the effects of the category adjustments, NTCA concurs with the Commission's contemplated reliance upon precedent in this area, including the proposals to require any carrier that opts out to: (a) recalculate its base period revenue using the unfrozen category relationships based upon 2011 cost study data; (b) refile a revised interstate switched access revenue requirement; and (c) adjust its interstate switched access rate cap proportionately with the change made to the interstate projected revenue requirement.[15] NTCA further concurs with the Commission's proposal to promote simplicity by offering only a single opportunity to unfreeze the category relationships and to provide sufficient notice for tariffing and other implementation measures. By contrast, NTCA opposes the prospect for "rolling," or ongoing, opportunities to elect to unfreeze categories (absent a future waiver petition); such measures should be unnecessary

[15] FNPRM at ¶¶ 28-31 (internal citations omitted). For purposes of clarification, any such adjustments to support should apply only *prospectively*. If the Commission were to adjust CAF-ICC support retroactively in this manner, it would need then to adjust as well high-cost USF support and access recovery charges looking backward, causing needless confusion and disruption.

given that carriers have had nearly two decades to consider the implications of having elected such a freeze in 2001.[16] Finally, NTCA opposes a *requirement* that carriers with frozen categories unfreeze them.[17] Some carriers may have premised their current business plans and broadband-capable network investments upon the presumption of a continuing category freeze, and it could be just as disruptive to these carriers as comprehensive separations reform itself to compel them to unfreeze their categories now.

For the foregoing reasons, NTCA encourages the Commission to adopt the specific proposals set forth in the FNPRM to extend the separations freeze and to provide a one-time opportunity for certain RLECs to "unfreeze" their existing categories. NTCA also supports targeted referrals to the Joint Board as necessary to address discrete questions in lieu of sweeping referrals aimed at comprehensive separations reform.

Respectfully submitted,

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[16] *Id*. at ¶¶ 32-33.

[17] *Id*. at ¶ 34.