

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these reply comments in response to comments on the two Public Notices issued in April 2017 by the Federal-State Joint Board on Separations (“Joint Board”) in the above-captioned proceeding. The first Public Notice² seeks comment on possible comprehensive reform of the Federal Communications Commission’s (“FCC”) Part 36 separations rules. The second Public Notice³ seeks comment on how the FCC’s February 2017 Report and Order⁴ revising certain of its Part 32 Uniform System of Accounts (“USOA”) accounting rules affect the agency’s Part 36 separations rules.

¹ NTCA represents more than 800 independent, community-based telecommunications companies. All NTCA members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive 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, Public Notice, FCC 17J-1 (rel. Apr. 24, 2017) (“Comprehensive Reform Public Notice”).

³ *Federal-State Joint Board on Jurisdictional Separations Seeks Comment on Referral for Recommendation of Rule Changes to Part 36 as a Result of Commission Revisions to Part 32 Accounting Rules*, CC Docket No. 80-286, Public Notice, FCC 17J-2 (rel. Apr. 24, 2017) (“Part 32 Public Notice”).

⁴ *Comprehensive Review of the Part 32 Uniform System of Accounts, Jurisdictional Separations and Referral to the Federal-State Joint Board*, WC Docket No. 14-130, CC Docket No. 80-286, Report and Order, FCC 17-15 (rel. Feb. 24, 2017) (“Part 32 Order”).

The record in this proceeding does not support comprehensive separations reform at this time.⁵ As NTCA noted in initial comments, current separations rules may ultimately need modification, if not complete overhaul, to reflect the evolution of the communications marketplace towards IP-enabled services that are interstate in nature. However, existing separations rules should be retained while reforms to Universal Service Fund (“USF”) and intercarrier compensation (“ICC”) mechanisms that specifically sit atop the existing rules still take root, and while critical additional work remains to ensure that the High Cost USF program can promote statutory mandates. Most importantly for purposes of this proceeding, recent reforms to USF and ICC mechanisms were based on a careful balance struck by the FCC, and thus separations reforms that reallocate costs amongst jurisdictions *now* could confound that balance and undermine important public policy objectives that balance was intended to produce. In other words, pulling at pieces of the separations foundation upon which these mechanisms sit would provide little apparent benefit but could toss a wrench into the interworking of critical broadband cost recovery mechanisms at an important inflection point and when they are not properly structured to handle such an event.

Moreover, the allocation of rate-of-return carriers’ cost is already shifting as consumers migrate “organically” toward services that are more interstate in nature. Shifting the allocation of costs faster than the pace of consumer demand could present complications – it could, for example, result in additional demand on federal High-Cost support mechanisms that are already insufficiently funded. Near-term separations reform would therefore produce little benefit

⁵ See Comments of USTelecom, CC Docket No. 80-286 (fil. May 24, 2017); Comments of CenturyLink, CC Docket No. 80-286 (fil. May 24, 2017); Comments of WTA – Advocates for Rural Broadband, CC Docket No. 80-286 (fil. May 24, 2017).

because at the same time as the regulatory environment that sits atop the separations foundation is evolving, the communications services marketplace is changing rapidly as well. Driven by the ongoing IP transition, this marketplace evolution is having a profound influence on every communications service which a consumer can choose today.⁶ The increased consumer demand for standalone broadband Internet access service under today’s rules already results in the assignment of 100 percent of the costs of that customer’s loop to the interstate jurisdiction. The increased consumer use of Voice over Internet Protocol (“VoIP”) service (facilities-based and over-the-top (“OTT”)) and mobile wireless service, as well as the prevalence of Internet of Things (“IOT”) devices, is also producing an “organic” effect on the underlying separations treatment of the networks that enable such services even as the same separations framework governs. Thus, concerns about accounting rules and cross-subsidies – particularly those mostly focused on one selected group of carriers⁷ – should not spur a precipitous movement towards comprehensive separations reform that ignores market trends and actually disrupts the operations of a *different* group of carriers and potentially harms the consumers they serve.

To be clear, NTCA is not suggesting that the Joint Board do nothing. Rather, the better approach to separations reform is for the Joint Board to focus its reform discussions on the “end-state” that will result from the marketplace and regulatory shifts discussed above and devise rules to account for the marketplace that will emerge. This will allow the FCC to focus its immediate

⁶ See Comments of NTCA, CC Docket No. 80-286 (fil. May 24, 2017), pp. 3-4 (pointing to the increased consumer demand for standalone broadband Internet access service and the increased consumer use of Voice over Internet Protocol (“VoIP”) service (facilities-based and over-the-top (“OTT”)) and mobile wireless service, as well as the prevalence of Internet of Things (“IOT”) devices and discussing the resulting “organic” effect on the underlying separations treatment of the networks that enable such services even as the same separations framework governs.).

⁷ See, Comments of the Irregulars CC Docket No. 80-286 (fil. May 24, 2017).

attention on continued implementation of USF and ICC reforms that sit atop the existing separations foundation and allow rate-of-return carriers to focus their limited resources on complying with new mandates and delivering IP-enabled services to as many rural consumers as possible. Separations reform can serve as a follow-on proceeding to such USF and ICC reform once fully implemented and would be based on the marketplace that will emerge.

While the record in this proceeding does not support comprehensive separations reform at this time, the FCC should grant rate-of-return carriers with frozen categorization factors a one-time option to “unfreeze” their part 36 category relationships and cost allocations provided that resulting adjustments can be made in tariff rate calculations. For these carriers, the shift toward IP-enabled and interstate/jurisdictionally mixed services are not carrying out separations shifts at the pace of consumer demand; shifts in consumer usage of interstate services are taking place, yet due to frozen categorization factors interstate cost assignments are not taking place at the pace of consumer demand. RLECs that froze their categorizations years ago now find themselves hindered by outdated cost categorizations that limit their ability to recover their costs, and they should be provided with the ability to calculate categories of investment and expenses based on today’s actual data, rather than allocations reflecting a network investment environment fifteen years old. Unlike more wide-ranging separations reform, this would represent a simple, straightforward exercise to recalibrate (but not upend) the separations framework for companies for whom the frozen categories are extremely outdated.

Finally, NTCA reiterates herein its request that the Joint Board release and seek comment on a draft recommended decision prior to issuance of any recommended decision on separations reform it provides to the FCC. Should the Joint Board move forward with recommending comprehensive reform of separations in the near-term despite the concerns noted herein, making

a draft recommended decision available to interested stakeholders would promote an open and ongoing effort to fine-tune draft proposals and minimize unnecessary complications that could otherwise emerge further down the road.

Respectfully submitted,



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June 8, 2017