

**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)

**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 and Order (“FNPRM”) released by the Federal Communications Commission (the “Commission”) in the above-referenced proceeding.² The FNPRM seeks comment on a proposal to extend the existing jurisdictional separations freeze for six years. For the reasons set forth herein, NTCA encourages the Commission to adopt a freeze of at least six years, if not longer.

The communications marketplace continues to evolve in ways that were inconceivable when separations rules were first developed. The transition to Internet Protocol-enabled services fueled by an underlying foundation of broadband-capable networks is only accelerating. For example, the migration of consumers at a relatively rapid pace to “standalone broadband services” – otherwise referred to in some regulatory contexts as “consumer broadband-only loops” (or “CBOLs”) – must inform any potential action in this proceeding. Since the Commission first provided support for broadband-only services in 2016, NTCA estimates that “plain old telephone

¹ NTCA is an industry association composed of approximately 850 community-based companies and cooperatives that were historically rate-of-return-regulated rural local exchange carriers (“RLECs”) and now provide a variety of advanced communications services in rural America.

² *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking and Order (rel. July 1, 2024).

service” lines have declined at an average annualized rate of more than 7% every six months for common line pool participants; in turn, CBOLs have increased remarkably, now representing nearly 50% of *all* connections provided by these same operators (up from being just 4% of all connections provided only seven years ago). Unsurprisingly, such trends in consumer-driven technology migration are not limited to RLEC areas. The Commission’s most recent Voice Telephone Services Report, reflecting data as of June 2022 showed that, for wireline services, interconnected VoIP subscriptions had grown from 66.5 million to just over 68 million in just three years, while retail switched access lines declined by more than 33% (from 41.2 million to 27.2 million) over that same three-year period.³

Such technological transitions and consumer demands for new services are effectuating market-driven separations shifts without the need for further regulatory intervention. Moreover, prior regulatory reforms to various cost recovery mechanisms have only facilitated and even encouraged such shifts. Put another way, these transitions moot the need for sweeping separations reform by enacting changes of their own accord and pursuant to operation of rules as already reformed over the last decade-plus. Indeed, the Commission itself recognizes this as it discusses in the FNPRM the “declining relevance of jurisdictional separations.”⁴ Current separations rules may assign 75 percent of the costs of a voice-only telephone line or a voice/data line to the intrastate jurisdiction but, once a customer ceases to procure a traditional voice line and opts instead for standalone broadband (*i.e.*, a CBOL connection), 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 traditional telephone lines, this has the effect of shifting

³ *Voice Telephone Services: Status as of June 30, 2022*, Industry Analysis Division, Office of Economics and Analytics (Aug. 2023), at Figure 1.

⁴ FNPRM, at ¶ 9.

costs to the interstate jurisdiction. Thus, the underlying separations treatment of networks and services is transitioning “organically” – and at an accelerating pace as the data above indicate – by virtue of technological transitions and consumer demand, obviating the need for sweeping and intrusive regulatory intervention to adjust a separations framework that governs fewer services, costs, and carriers over time.

In fact, substantial revisions to the existing separations framework would risk only undermining or even disrupting, rather than furthering, this marketplace-driven transition while yielding little long-term substantive value. This stunning marketplace evolution rests in significant part atop the current separations foundation; within those mechanisms that still provide recovery or support based upon actual costs, investments are made and services are delivered based upon the current framework, and regulatory reforms over the past decade to key ratemaking and cost recovery mechanisms sit atop this foundation as well. For example, the high-cost universal service rules as reformed to provide support for CBOs have undoubtedly enabled greater consumer adoption of standalone broadband services as described above – *the costs of which again are assigned entirely to the interstate jurisdiction*. Likewise, as the Commission notes in the FNPRM,⁵ substantial intercarrier compensation reforms enacted and implemented over the past decade-plus have all but eliminated the need to apply separations rules to calculate interstate and intrastate switched access rates. Finally, as the FNPRM rightly observes,⁶ hundreds of RLECs have migrated toward incentive regulation through cost models that substitute for traditional common line cost recovery, and many of these have elected or may in the future elect incentive regulation in the context of special access pricing too – highlighting even further the shrinking number of

⁵ FNPRM, at ¶ 10.

⁶ *Id.* at ¶¶ 9-10.

regulatory ratemaking and cost recovery constructs in which separations treatment plays any meaningful part. Pulling the existing threads of the separations framework through sweeping reform would only create new regulatory uncertainty and deter investment in advanced networks and services for those still subject to this framework, even as the framework applies to a smaller subset of carriers, services, and costs over time.

The marginal-at-best benefits to be gained from unwinding and remaking the existing separations framework must be weighed against the sizeable burdens that would arise out of separations reform. As described above, the separations framework at this point is better viewed as transitioning itself organically toward an eventual sunset, rather than something in need of fundamental reform and revision amidst that transition. Moreover, comprehensive separations reform would hit hardest those small businesses that are already stretched thin by regulatory compliance and have found themselves unable to migrate to other support and cost recovery frameworks. In the face of such existing challenges, these smaller providers would be forced to return to a regulatory environment that last operated in full more than two decades ago, necessitating the hiring or retraining of staff – assuming commercial 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 at least six years, if not longer. In fact, NTCA would urge the Commission to go further and to direct the Joint Board upon referral during this extension to assess whether the technological transitions, consumer-driven shifts, and other factors described herein warrant viewing the current separations regime as a steadily declining part of a transitional framework in an evolving marketplace rather than as a regulatory construct in need of comprehensive reform and reimposition pursuant to an arbitrary deadline. In short, rather than remaking the separation

regime, it is time for the Commission to recast how it views the separations regime. In particular, the Commission should view this self-effectuating transition as a positive development in its own right, rather than undertaking substantial efforts to unwind and reform a system of limited application and shrinking impact – and in the process compel some of the smallest providers to jump through sizeable hoops to comply with rewritten rules governing a narrowing set of costs and services.

For the foregoing reasons, NTCA encourages the Commission to extend the separations freeze and to proceed otherwise as recommended herein.

Respectfully submitted,



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August 19, 2024