

**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 )

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

NTCA–The Rural Broadband Association<sup>1</sup> hereby submits these comments in response to the Public Notice<sup>2</sup> released by the Federal-State Joint Board on Jurisdictional Separations (“Joint Board”) in the above-captioned proceeding. The Public Notice seeks comment on issues referred to the Joint Board by the Federal Communications Commission (“Commission”),<sup>3</sup> specifically: (1) whether Part 36 separations rules continue to be necessary in light of changes in the communications marketplace; (2) whether a permanent “freeze” of the rules should be adopted; and (3) whether operators subject to the rules should have a one-time opportunity to “unfreeze” their category relationships.<sup>4</sup> NTCA herein calls the Joint Board’s attention to the ongoing foundational nature of Part 36 separations rules in cost recovery mechanisms that many small carriers rely upon to deliver advanced services to their rural communities. At the same

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<sup>1</sup> NTCA is an industry association composed of approximately 850 community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or themselves are engaged in the provision of such services.

<sup>2</sup> *Federal-State Joint Board on Separations Seeks Comment on Part 36 Separations Rules in Response to Commission Referrals*, CC Docket No. 80-286, Public Notice, FCC 25J-1 (rel. Feb. 14, 2025).

<sup>3</sup> *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 24-118 (rel. Nov. 13, 2024) (“*2024 Separations Freeze Order*”), ¶¶ 26-32.

<sup>4</sup> *Id.*

time, as also discussed herein, the evolving marketplace mitigates the need for the re-opening of these rules, as the continued deployment of new technologies and the migration of consumers to new services is resulting in the decreasing application of the rules “naturally” over time – this justifies a permanent freeze in lieu of re-opening the framework and undertaking comprehensive reform.

As to the first question for referral, while the communications marketplace is rapidly evolving as the Commission notes in its referral,<sup>5</sup> a number of the mechanisms that many smaller rural providers rely upon to recover investments in the very networks that advance this technological evolution rest atop the Part 36 separation rules. It is true that consumers’ transition to standalone broadband (or “consumer broadband-only loops”) is increasing, and rural carriers are increasingly moving to IP-based voice solutions while customers, in turn, are increasingly procuring these or other alternatives for voice communications.<sup>6</sup> This marketplace evolution will continue over time to reduce the carrier costs and services to which the separations framework applies by its own operation. Yet, for now, the separations regime remains essential in setting certain regulated rates and in other means of recovering regulated costs at the federal

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<sup>5</sup> *Id.*, ¶ 1 (“In light of sweeping technological and regulatory changes in the marketplace and the resulting ongoing transition from traditional telephone service to broadband-based voice services, the separations rules play a substantially diminished role in allocating costs between the interstate and intrastate jurisdictions.”).

<sup>6</sup> *Communications Marketplace*, GN Docket No. 24-119, 2024 Communications Marketplace Report, FCC 24-136 (rel. Dec. 31, 2024), ¶ 156 (finding that “fixed retail switched-access lines declined over the past three years at a compound annual rate of 15.7%.”); *See also* NTCA *Broadband/Internet Availability Survey Report, 2024*, (“*NTCA 2024 Survey*”), p. 4, (“The vast majority of 2024 respondents (83.2%) report using owned or leased IP switching facilities, such as softswitches, for voice telephony services in their ILEC areas.”); available at: <https://www.ntca.org/sites/default/files/documents/2025-01/2024-broadband-internet-availability-report.pdf>.

and state level alike. It would therefore be premature to declare the Part 36 separations rules “unnecessary” in their entirety;<sup>7</sup> in fact, doing so could undermine the predictability that fosters investment and “pull at the threads” of an interwoven federal and state cost recovery framework that is helping to drive innovation and investment in advanced networks in many parts of rural America.<sup>8</sup> For these reasons, as to the first question presented for referral, the Joint Board and the Commission should permit the marketplace to drive the evolution of the separations regime – as is already happening – in lieu of scrapping it or undertaking substantial reform of it in a manner that creates substantial regulatory uncertainty and risks disrupting this evolution.

Turning to the second referral question of whether the “freeze” should be made permanent, NTCA recommends this approach. First, the Commission has solicited comment on separations freezes numerous times,<sup>9</sup> and nothing found in the resulting record supports “unfreezing” the rules. Indeed, should the Commission do so, on its own motion or acting upon a Joint Board recommendation, small rural providers and federal and state regulators alike would

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<sup>7</sup> Comments of NTCA, GN Docket No. 25-133 (fil. Apr. 11, 2025), pp. 3-4 (pointing to the “costs and burdens (and potential confusion) of jump-starting significant reforms of the separations regime would outweigh any benefits” and noting the need for a surgical assessment “regarding how the rules might be streamlined accordingly and updated on a targeted basis.”).

<sup>8</sup> *NTCA 2024 Survey*, p. 7 (discussing survey results that “show continued growth in the availability of higher-speed services. On average, nearly nine in 10 customers (88.6%) can now access maximum downstream speeds of 100 Mbps or more, up from 84.0% in 2023. The largest increase is again seen in the Gigabit tier, with an average of 76.4% of customers now able to receive maximum downstream speeds of 1 Gig or more—up from 67.1% in 2023, 60.9% in 2022, 55.4% in 2021, and 45.1% in 2020.”).

<sup>9</sup> *E.g.*, *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking and Order, FCC 24-71 (rel. Jul. 1, 2024); *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking and Order, FCC 17-22 (rel. Mar. 20, 2017).

be forced to renavigate and potentially recreate a regulatory framework that has offered relative predictability and stability for more than two decades. Assumptions years in the making with respect to how costs are apportioned and recovered would be upset, putting at risk years of investments in advanced networks and services in rural areas by hundreds of smaller providers. In addition, these small providers would need to hire or retrain staff (assuming expertise can even be found to do either, as most versed in these rules have long since moved on) and revise internal procedures in ways that could overwhelm their operations to comply with a reshuffled separations deck. Regulators would presumably need to do the same, devoting substantial staff time and resources to a framework that, while still important for the reasons noted above in many cases, has applied to a decreasing class of carriers, services, and costs over time. Moreover, continuing with iterative short-term freezes does nothing more than initiate unnecessary and repetitive notice and comment cycles that themselves foster regulatory uncertainty.<sup>10</sup> A permanent freeze, on the other hand, would allow the separations regime to continue winding down on its own, as noted above, while avoiding the disruption that would ensue should a “thawing” of the freeze or comprehensive reform be undertaken. In other words, even if the freeze is “permanent,” it should be viewed as helping to effectuate the ongoing transition of the separations regime. NTCA therefore recommends that the Commission and the Joint Board make the current freeze permanent.

Finally, as to the third referral question, NTCA supports allowing providers opting to freeze their category relationships in 2011 the chance to opt out of that specific element of the freeze, as this would confer the ability to categorize costs more accurately based upon current

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<sup>10</sup> See *2024 Separations Freeze Order*, ¶ 18 (finding that “maintaining the current separations regime provides stability to carriers.”).

circumstances without “upsetting the entire apple cart.” Although the Commission recently declined to take this step noting that “many carriers are no longer subject to cost-based regulation or the separations rules for any of their services,”<sup>11</sup> for those that still remain subject to and dependent upon such rules, this kind of narrow and targeted update could yet again help to further the transition described above by having cost assignments track more closely to shifts in consumer usage of services and thereby creating better incentives to invest. NTCA therefore recommends that the Commission and the Joint Board offer providers with frozen category relationships a narrow and targeted opportunity to recategorize them.

Respectfully submitted,



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<sup>11</sup> *Id.*, ¶ 23.