

**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”)<sup>1</sup> hereby submits these comments in response to the Further Notice of Proposed Rulemaking seeking comment on a proposal to extend, for eighteen months, the current “freeze” on Part 36 category relationships and jurisdictional cost allocation factors applicable to incumbent local exchange carriers (ILECs).<sup>2</sup> NTCA supports an extension of a length sufficient to enable the Federal-State Joint Board on Separations (“Joint Board”)—and the Federal Communications Commission (“Commission”) as well in its review of the issues involved that will take place subsequent to a Joint Board recommendation—to fully consider the ramifications of recent regulatory reforms and technology changes on the existing separations rules generally and on RLECs more specifically. While this extension should *in no case be less than eighteen months* as proposed in the Further Notice, the Commission should consider that the agency may need sufficient time to consider any Joint Board recommendation once issued and should therefore adopt an extension of the freeze tied specifically to and triggered by the issuance of such a recommendation. Further, the length of that extension should also take into account the need to grant affected carriers sufficient time to conform to any new Commission rules ultimately adopted. Both

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<sup>1</sup> NTCA represents more than 800 independent, community-based rural rate-of-return regulated telecommunications providers (“RLECs”). 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.

<sup>2</sup> *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80- 286, Further Notice of Proposed Rulemaking, FCC 17-22 (rel. Mar. 20, 2017) (“Further Notice”).

regulatory certainty and an eye towards limiting the burden on small RLECs specifically should compel the Commission to adopt such an extension.

As to the proposal to extend the current freeze, as the Further Notice states,

policy changes adopted by the Commission in recent years, particularly those arising from the Commission's fundamental reform of the high cost universal service support program and intercarrier compensation systems in the USF/ICC Transformation Order and from our recent changes to the Part 32 accounting rules, will significantly affect the Commission's and the Joint Board's analysis of interim and comprehensive separations reform.<sup>3</sup>

With this in mind, it is difficult to conceive of any compelling argument *against* extending the existing separations freeze. The policy changes referenced by the Further Notice represent, for RLECs in particular, perhaps the most fundamental policy changes to cost recovery mechanisms since the Commission's early efforts to effectuate the Telecommunications Act of 1996. A modernization of the program for the broadband era has entirely remade the High-Cost Universal Service Fund ("USF"), and the ramifications of changes to intercarrier compensation ("ICC") mechanisms adopted in 2011 are still being fully understood. The Joint Board must therefore incorporate a review of those changes into its deliberations. Based on the significance of these recent policy changes, as well as the fact that state and federal regulators have distinct responsibilities with respect to the administration of universal service and ICC rules and oversight of providers that will factor into their deliberations, it is unlikely that the Joint Board can complete the process of issuing a recommendation for separations rule changes by June 30, 2017. An extension as proposed in the Further Notice would provide sufficient time for that process to take its course.

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<sup>3</sup> Further Notice, ¶ 7.

On the other hand, should it allow the freeze to expire, the Commission would only create regulatory uncertainty and unnecessary administrative burdens for RLECs. In the wake of an expiration of the freeze, RLECs would be forced to return to a pre-2001 environment, retraining staff and revising internal procedures and cost studies to come into compliance with suddenly “unfrozen” Part 36 category relationships and jurisdictional cost allocation factors. Even worse, as the Further Notice recognizes, “given the significant changes in technologies and investment decisions, as well as changes in regulatory approaches at both the state and federal levels, the existing separations rules are likely outdated.”<sup>4</sup> Thus, much of the effort to come into compliance with existing rules in the wake of an expiration of the freeze would be *wasted*; these small carriers would be required to undertake significant *additional* changes once a recommendation by the Joint Board is issued in April 2018 and put into place by a vote of the full Commission. The better approach, as the Further Notice recognizes, is an extension of the freeze that will provide a level of stability and regulatory certainty for RLECs and their limited staff resources, allowing them to direct those limited resources to more immediate needs while long-term reform is deliberated and completed.

Finally, NTCA also urges the Commission to consider extending the freeze beyond eighteen months as proposed in the Further Notice. The length of the extension should be tied to and triggered by the issuance of a Joint Board recommendation and include sufficient time to enable carriers to come into compliance with final Commission rules after they are adopted. Such a tie to the issuance of a Joint Board recommendation is necessary because eighteen months as proposed may not provide either the Joint Board or the Commission sufficient time to

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<sup>4</sup> *Id.*, ¶ 8.

consider the many complicated issues involved. Separations implicates complicated issues of relevance to both state and federal regulators, and these issues have not been considered in over fifteen years and involve technology that has changed markedly in that time. As a result, the Joint Board may not be able to complete the adoption of recommended decision by April 2018. Thus the Commission may itself be forced to consider and adopt rules based on that recommendation in a compressed time frame (shorter than the 8 months it anticipates).<sup>5</sup> On the other hand, Commission consideration of the Joint Board recommendation could possibly extend well beyond the eighteen months as proposed in the Further Notice, forcing the agency to adopt yet another extension if a rulemaking to consider the recommended decision cannot be completed in less than 8 months. Failure to account for this reality will only produce more regulatory uncertainty at a time when RLECs are just beginning to implement the recent changes in the High Cost program and working towards meeting their USF buildout obligations.<sup>6</sup> In addition, the Commission should consider the need to give RLECs sufficient time to comply with any final updated separations rules once adopted. Returning to the Further Notice reference to “the significant changes in technologies and investment decisions,”<sup>7</sup> it is likely that updated separations rules will look far different from pre-2001 rules that were effective prior to the freeze. Thus RLECs should be granted additional time—180 days at least—to come into compliance with any final Commission rules. This would ensure that small carriers are afforded

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<sup>5</sup> The Public Notice seems to indicate that the Commission anticipates a Joint Board recommendation by April 2018 followed by the adoption of final Commission rules by January 2019. *Id.*, ¶ 10.

<sup>6</sup> See, 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, FCC 16-33 (rel. March 30, 2016) (“*Rate-of-Return Reform Order*”), ¶¶ 29-35, 156-180.

<sup>7</sup> Further Notice, ¶ 8.

the necessary time to adjust their internal processes and cost allocations in a manner that will likely be necessary to account for the very different technological environment that exists today and that will inform any updated separations rules.

Thus, the time period for an extension of the separations freeze should be specifically tied to and triggered by the issuance of a Joint Board recommendation with a sufficient time period for the Commission to conduct a rulemaking after issuance of that recommendation and with additional time tacked on after final Commission rules are adopted to enable carrier implementation.

Respectfully submitted,



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