Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Jurisdictional Separations and Referral to the Federal-State Joint Board	)	CC Docket No. 80-286
	)	
	)	
	)	

COMMENTS OF TERRAL TELEPHONE COMPANY, INC.

TERRAL TELEPHONE COMPANY, INC.

Michael R. Bennet
Erin P. Fitzgerald
Womble Bond Dickinson (US) LLP
1200 Nineteenth Street, NW
Suite 500
Washington, DC 20016
(202) 857-4442
Michael.Bennet@wbd-us.com
Its Attorneys

August 27, 2018

<u>Table of Contents</u>

<u>Page No.</u>

SUMMARY

Terral Telephone Company, Inc. ("Terral") files these comments in response to the Federal Communications Commission's ("FCC" or "Commission") Further Notice of Proposed Rulemaking in which the Commission seeks comment on its proposal to provide a time-limited opportunity for carriers that elected the category relationships freeze to opt out of that freeze. Terral urges the Commission to adopt its proposal to allow carriers that elected to freeze their category relationships an opportunity to change their election, and to do so without delay.

In the *2001 Separations Freeze Order*, the Commission froze the Part 36 separations rules for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first. The *2001 Separations Freeze Order* also gave ROR carriers a one-time option to freeze their category relationships for the same initial time period. The Commission has extended the separations freeze seven times, with the most recent extension set to expire on December 31, 2018. Carriers that opted into the category relationships freeze have been subject to the freeze for more than 17 years – far longer than the five years or less they were promised.

In August 2012, Terral filed a petition asking the Commission to waive various sections of Part 36 of its rules and to unfreeze the Part 36 category relationships as they apply to Terral because the continuing application of the freeze was harming Terral. Terral was making substantial investments in interoffice facilities necessary to begin to offer broadband services to Terral customers which could not be accurately allocated based on the frozen categories. The frozen separation categories based on a 2001 network no longer resembled the network that Terral currently operates and prevented Terral from recovering its existing costs. Since Terral

filed the waiver petition, the disparity between existing expenses and investment and the proper recovery of those costs has only increased.

A one-time opportunity for carriers that elected the category relationships freeze to change their election will serve the public interest by allowing carriers to assign costs in a manner that reflects how they offer services today and promoting broadband development. Further, as the Commission considers its proposal to allow carriers that elected the category relationships freeze an opportunity to change their election, it will find significant support for such action already in the record.

Terral notes that the Commission's proposal to provide a time-limited opportunity for carriers that elected the category relationships freeze to opt out of that freeze would not impose burdens on carriers. The realized cost savings from not having to conduct separations studies are insignificant for a company like Terral. As such, if Terral is allowed to unfreeze its categorical relationships, it would maintain the same processes it uses now to keep track of costs – the administrative burden would be unchanged.

Because the Federal-State Joint Board on Jurisdictional Separations and the Commission are not able to accomplish comprehensive separations reform, lifting the category relationships freeze is the only way that affected carriers will be able to manage their businesses going forward. As such, Terral urges the Commission to adopt the *FNPRM's* proposal to allow carriers that elected the category relationships freeze an opportunity to change their election, and to do so without delay.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Jurisdictional Separations and Referral to the Federal-State Joint Board	)	CC Docket No. 80-286
	)	
	)	
	)	

COMMENTS OF TERRAL TELEPHONE COMPANY, INC.

Terral Telephone Company, Inc. ("Terral") files these comments in response to the Federal Communications Commission's ("FCC" or "Commission") Further Notice of Proposed Rulemaking[1] in which the Commission seeks comment on its proposal to provide a time-limited opportunity for carriers that elected the category relationships freeze to opt out of that freeze. Terral urges the Commission to adopt its proposal to allow carriers that elected to freeze their category relationships an opportunity to change their election, and to do so without delay.

I. BACKGROUND AND INTRODUCTION.

Rate-of-return ("RoR") incumbent local exchange carriers ("LECs") provide both interstate and intrastate services. Part 36 of the Commission's rules requires that RoR incumbent LECs divide their costs and revenues between the interstate and intrastate jurisdictions to help prevent the recovery of the same costs from both jurisdictions.[2] These "jurisdictional separations" rules were "designed to ensure that [RoR] incumbent LECs apportion the costs of their regulated services between the interstate or intrastate jurisdictions in a manner that reflects

[1] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, Further Notice of Proposed Rulemaking, CC Docket No. 80-286, FCC 18-99 (rel. July 18, 2018) ("*FNPRM*")
[2] 47 C.F.R. Part 36.

the relative use of their networks to provide interstate or intrastate services."[3] However, the "vast majority of the jurisdictional separations rules were last updated more than 30 years ago."[4]

In 1997, the Commission initiated a proceeding to comprehensively reform those rules "to ensure that they reflected the statutory, technological, and marketplace changes that had affected the telecommunications industry."[5] In the *2001 Separations Freeze Order*,[6] the Commission froze the Part 36 separations rules for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first.

a. Category Relationships Freeze.

The Commission's *2001 Separations Freeze Order* also gave ROR carriers a one-time option to freeze their category relationships, enabling each of these carriers to determine whether such a freeze would be beneficial "based on its own circumstances and investment plans."[7] The deadline to opt into the category relationships freeze was June 30, 2001.[8] ROR carriers that chose to freeze their category relationships assign investment and expenses within their Part 32 accounts to categories using their separations category relationships from 2000, and allocate their categorized costs between the interstate and intrastate jurisdictions using their allocation factors from 2000.[9] The Commission has extended the separations freeze seven times,

---

[3] *FNPRM* at ¶ 3.
[4] *FNPRM* at ¶ 6.
[5] *FNPRM* at ¶ 6; *see also Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22126, at ¶ 9 (1997).
[6] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 (2001) (*2001 Separations Freeze Order*).
[7] *2001 Separations Freeze Order* at ¶ 21.
[8] *FNPRM* at ¶ 7; *see also 2001 Separations Freeze Order*, 16 FCC Rcd at 11393-408, at ¶¶ 18-55 (describing the components of the separations freeze in detail).
[9] *FNPRM* at ¶ 9.

with the most recent extension set to expire on December 31, 2018.[10] Carriers that opted into the category relationships freeze have been subject to the freeze for more than 17 years – far longer than the five years or less they were promised.

b. Terral Telephone Company, Inc.

Terral's study area is a single exchange, serving one small town and its surrounding rural area in south-central Oklahoma in southern Jefferson County. But the area is not "just rural." It is remote and isolated. Terral serves 2.42 access lines per square mile and approximately 1.8 customers per route mile. There are no competitive local exchange carriers ("CLECs") or other fixed broadband carriers serving the study area. Mobile wireless broadband service is spotty at best, and does not provide speeds or capacity adequate to serve as a sufficient substitute for fixed broadband. The nearest town of over 5,300 population is approximately 50 miles away. There are no nearby shopping malls or stores to sell products. Terral's subscribers include farmers, ranchers, and owners of cottage industries – all of whom need access to voice and broadband service to market their products and conduct business.

Terral's service territory is 100% encompassed within Chickasaw Nation tribal land.[11] It is 125 miles from the Chickasaw Nation tribal headquarters in Ada, Oklahoma, 65

---

[10] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 32 FCC Rcd 4219 (2017); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 29 FCC Rcd at 6470 (2014); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 27 FCC Rcd 5593 (2012); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 26 FCC Rcd 7133 (2011); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 25 FCC Rcd 6046 (2010); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 24 FCC Rcd 6162 (2009); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516, 5517, 5523, at ¶¶ 1, 16 (2006).

miles from the nearest Indian Health Clinic in Ardmore, and 66 miles from the nearest Tribal police substation. Tribal members in Terral's service territory require voice and broadband service to access Tribal Headquarters, hospitals, clinics, schools, and police.

i. Terral Telephone Company, Inc. Category Relationships Freeze Then and Now.

Based on the understanding that the freeze would expire on June 30, 2006 or when the Commission completed comprehensive separations reform – whichever came first,[12] Terral notified the National Exchange Carrier Association ("NECA") of its election to freeze its category relationships. When Terral made this election, however, it did not anticipate that the freeze would last for such an extended period of time.

In August 2012, Terral filed a petition[13] asking the Commission to waive various sections of Part 36 of its rules and to unfreeze the Part 36 category relationships as they apply to Terral because the continuing application of the freeze was harming Terral. Terral was making substantial investments in interoffice facilities necessary to begin to offer broadband services to Terral customers which could not be accurately allocated based on the frozen categories. The frozen separation categories based on a 2001 network no longer resembled the network that

---

[11] *Connect America Fund*, Report and Order, WC Docket No. 10-90, FCC 18-37 (rel. Apr. 5, 2018) (increasing the amount of operating costs that carriers that predominantly serve Tribal lands can recover from the USF in recognition that they are likely to have higher costs than carriers not serving Tribal lands, and recognizing Terral as one of five companies identified by the Commission that meet the criteria").
[12] *2001 Separations Freeze Order* at ¶ 9.
[13] *Jurisdictional Separations and Referral to the Federal-State Joint Board, Petition by Terral Telephone Company, Inc. for Waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships*, Petition of Terral Telephone Company, Inc. for Waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships, CC Docket No. 80-286 (August 29, 2012) ("*Waiver Petition*").

Terral currently operates and prevented Terral from recovering its existing costs.[14] Since Terral filed the waiver petition, the disparity between existing expenses and investment and the proper recovery of those costs has only increased.

ii. Terral Telephone Company, Inc. Network Investments.

Because of Terral's geographic location and size, Terral incurs high transport costs in order to connect to the outside world. In order to bring broadband to the area, Terral was required to build out a fiber connection to the nearest fiber network – 43 miles away – in order to interconnect, at a cost of approximately $3 million. Because of the separations freeze, almost all of this cost was reflected as last mile loop cost. Allocating these costs to last mile loop creates artificially high per line costs – costs subsidized in part by high broadband rates or simply absorbed.

II. A ONE-TIME OPPORTUNITY FOR CARRIERS THAT ELECTED THE CATEGORY RELATIONSHIPS FREEZE TO CHANGE THEIR ELECTION WILL SERVE THE PUBLIC INTEREST.

Terral urges the Commission to adopt the *NPRM*'s proposal to afford carriers that elected the category relationships freeze an opportunity to change their election, and to do so without delay. As discussed further below, category relationships freeze relief will serve the public interest by allowing carriers to assign costs in a manner that reflects how they offer services today and thereby promoting broadband development.

[14] With its category relationships frozen, Terral is unable to recover its costs to provide broadband-only service from its few broadband subscribers nor is it able to recover such costs from the NECA pool, or Connect America Fund Broadband Loops Support ("CAF BLS"). If the Commission lifts the freeze, Terral would be able to shift the cost where it belongs – to interstate special access. Further, Terral could reduce the costs attributed to subscriber plant and provide more reasonably priced broadband services.

a. Unfreezing Category Relationships Will Allow Carriers to Assign Costs in a Manner that Reflects How They Offer Services Today and Recover Network Upgrade Costs.

Like Terral, most carriers subject to the category relationships freeze have made substantial investments to modernize their networks and to improve and expand their service offerings, but are unable to recover costs of network upgrades. In Terral's case, because of the separations freeze, facility costs that would not typically be related to last-mile loop costs are treated as last-mile loop costs. Allocating such costs to last-mile loop artificially creates unusually high per line costs. With the ability to unfreeze its category relationships, Terral could appropriately allocate its costs to the interstate jurisdiction, which would allow it to receive cost-based settlements that would come from interstate pool settlements – not from the high-cost loop fund. This would significantly (and appropriately) reduce Terral's federal universal service support. Although overall revenues would remain roughly the same, the predictability of support from interstate pool settlements would be extremely beneficial to Terral.[15]

The *FNPRM* requests specific information as to rates, pricing, costs between jurisdictions and among access elements, and how much universal service funding the carrier receives.[16] In its 2012 *Waiver Petition* Terral provided a significant amount of confidential information concerning the impact of unfreezing its category relationships on the universal service fund and the NECA pool for special access services, and the expected changes to the

[15] *See Petition of Terral Telephone Company, Inc. For Waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships*, *Ex Parte Letter* from Mary J. Sisak, Counsel to Terral Telephone Company, Inc., to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 80-286 (Sept. 14, 2017) (noting that a lift on the category relationships freeze would "allow the proper jurisdictional allocations of investment and expense and, as a result, it would reduce Terral's reliance on federal and state universal service support, neither of which are reliable sources of revenue").

[16] *FNPRM* at ¶¶ 26-27.

proportion of net investment that would be allocated to intrastate and interstate jurisdictions.[17] Terral updated this information to show the impact of unfreezing its category relationships in August 2017,[18] and provided further information concerning the impact on Terral's revenues in October 2017.[19] Generally, lifting the category relationships freeze would allow Terral to appropriately allocate its costs and enable it to receive the appropriate cost-based settlements. This would reduce Terral's last-mile costs, which will reduce the amount of revenue impacted by the FCC's universal service support cap mechanisms. Terral projects that its total combined capped Interstate Common Line Support ("ICLS")/CAF BLS and High Cost Loop Support ("HCLS") revenue will remain unchanged if the freeze is lifted and if Terral retains the same number of subscribers that it has now.[20] Accordingly, such action by the Commission should have no adverse impact on federal universal service support.

b. Lifting the Category Relationships Freeze Would Promote Greater Investment in Newer Technologies and Increased Broadband Deployment.

The Commission notes that in the years since 2000:

> [M]any, and perhaps all, carriers subject to the category relationships freeze have made substantial investments to modernize their networks and improve and expand their service offerings. In at least some instances, these investments are more weighted toward business data services, and away from switched access and common

---

[17] *Waiver Petition* at Section III.B.1 and related attachments.

[18] *Petition of Terral Telephone Company, Inc. For Waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships*, *Ex Parte Letter* from Mary J. Sisak, Counsel to Terral Telephone Company, Inc., to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 80-286 (Aug. 16, 2017).

[19] *Petition of Terral Telephone Company, Inc. For Waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships*, *Ex Parte Letter* from Mary J. Sisak, Counsel to Terral Telephone Company, Inc., to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 80-286 (Oct. 31, 2017).

[20] However, if the freeze is lifted, the USF HCLS fund would realize savings with very minimal Terral subscriber gains. With the freeze in place, the only way for the USF HCLS fund to realize savings would be for Terral to lose subscribers.

> line categories, than the carriers' investments were as of 2000. If that is the case, under the category relationships freeze, disproportionate percentages of those carriers' investments are currently assigned to the common line and switched access categories."[21]

Terral agrees with the Commission's assessment and is one of the carriers that is "consequently unable to recover the costs of network upgrades from their business data services customers and from NECA's special access pool."[22]

The freeze on category relationships is a major impediment to the deployment of broadband. It is, in fact, the primary obstacle to Terral's deployment of broadband throughout its service area. As discussed above, if Terral were able to unfreeze its category relationships, only last-mile loop costs would be assigned to subscriber loop. This would significantly reduce Terral's last mile costs, allow Terral to reduce customer broadband rates, make broadband more affordable, and create a broader market for broadband service. In short, lifting the category relationships freeze will allow Terral to increase broadband deployment and reduce broadband retail rates, thus leading to an increase in broadband penetration. This will benefit all Terral customers as well as all users of broadband services in Terral's service area.

c. There is Broad Support for Unfreezing Category Relationships in the Record.

As the Commission considers its proposal to allow carriers that elected the category relationships freeze an opportunity to change their election, it will find significant support for such action already in the record. In its May 2017 Comments, NTCA – The Broadband Association ("NTCA") rightly stated that "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," and that "RLECs that froze their categorizations years ago now find

[21] *FNPRM* at ¶ 25.
[22] *FNPRM* at ¶ 25.

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."[23]

In its May 2017 Comments, WTA – Advocates for Rural Broadband ("WTA") proposed that "RLECs that elected to freeze certain category relationships in response to the 2001 freeze should have a limited, one-time option to unfreeze them."[24] Moss Adams LLP filed Reply Comments in this docket in June 2017 and agreed with NTCA and WTA, stating "[o]ne reform that all parties appear to agree on is that carriers that voluntarily froze their separations factors should have the opportunity to unfreeze…those factors now. This voluntary freeze has extended well beyond the initial five-year period that was intended and has resulted in cost recovery becoming skewed from the actual services being provided today, and companies should be allowed to rectify this situation."[25]

Further, the Commission has granted two waivers allowing for unfreezing of category relationships for the same reasons a general opt-out opportunity is warranted here – to allow cost category assignment to more accurately reflect network investment. On November 21, 2006, Gila River Telecommunications, Inc. ("GRTI") filed a Petition seeking a waiver of sections 36.3,

[23] Comments of NTCA – The Rural Broadband Association, CC Docket No. 80-286, at p. 10 (May 24, 2017); *see also* Comments of ITTA, CC Docket No. 80-286, at p. 10 (May 24, 2017) (stating that "the Commission should allow rate-of-return carriers the option of a one-time unfreezing of their category relationships").

[24] Comments of WTA – Advocates for Rural Broadband, CC Docket No. 80-286, at pp. iv, 11 (May 24, 2017) (stating that "as marketing and adoption of broadband-only services increases, more marketing and customer service costs should be assigned to the revenue requirements for these broadband-only services and to the [CAF-BLS] mechanism. However, this cannot be done if certain category relationships were frozen in 2001 unless and until such category relationships are unfrozen").

[25] Reply Comments of Moss Adams LLP, CC Docket No. 80-286, at p. 6 (June 8, 2017).

36.123– 126, 36.152–157, and 36.372–382 of the Commission's rules to unfreeze GRTI's category relationships.[26] The Commission granted GRTI's petition in November 2010, stating that grant of the request would allow GRTI "to adjust amounts assigned to separations categories to reflect its network upgrades and will result in additional high-cost loop support from the federal universal service fund."[27]

On May 25, 2011, Eastex Telephone Cooperative, Inc. ("Eastex") filed a petition seeking a waiver of sections 36.3, 36.123–126, 36.141, 36.152–157, 36.191, and 36.372–382 of the Commission's rules to unfreeze Eastex's category relationships.[28] The Wireline Competition Bureau ("Bureau") granted Eastex's petition in June 2012, stating that grant of the request would allow it to "adjust cost category assignments to more accurately reflect its network investment, and will not result in additional support from the federal Universal Service Fund."[29] Terral urges the Commission to take into account the significant support already in the record for its proposal

[26] Petition of Gila River Telecommunications Inc. to Unfreeze Part 36 Category Relationships, CC Docket No. 80- 286 (filed Nov. 21, 2006); *see also* Petition of Gila River Telecommunications Inc. to Unfreeze Part 36 Category Relationships Supplement to Petition and Request for Confidential Treatment, CC Docket No. 80-286 (filed Aug. 31, 2007).
[27] *Petition by Gila River Telecommunications, Inc. Pursuant to 47 C.F.R Sections 36.3, 36.123 – 126, 36.152 -157, and 36.372 -382 for Commission Approval to Unfreeze Part 36 Category Relationships*, Order, CC Docket No. 80-286 (rel. Dec. 2, 2010).
[28] Petition of Eastex Telephone Cooperative, Inc. to Unfreeze Part 36 Category Relationships, CC Docket No. 80-286 (filed May 25, 2011).
[29] *Petition by Eastex Telephone Cooperative, Inc. Pursuant to 47 C.F.R Sections 36.3, 36.123–126, 36.141, 36.152–157, 36.191, and 36.372–382 for Commission Approval to Unfreeze Part 36 Category Relationships*, Order, CC Docket No. 80-286 (rel. June 15, 2012) ("*Eastex Waiver Order*"). Grant of the waiver reduced Eastex's universal service support, but yielded increased NECA settlements resulting in an overall increase in Eastex's cash flow. The Eastex waiver resulted in an increase of one-half of one percent (0.5%) on the NECA pool. In comparison, if Terral is allowed to unfreeze its categories it would amount to a 0.00447% increase to the NECA pool as a whole, annually. While insignificant to the pool, this shift is very significant to Terral's ability to provide services to its customers. Terral's calculated uncapped USF will significantly drop and NECA traffic sensitive settlements will increase, at a much less impact to NECA than Eastex.

to allow carriers that elected the category relationships freeze an opportunity to change their election.

d. Lifting the Category Relationships Freeze Will Not Burden Carriers That Opt Out.

The Commission seeks comment on whether lifting the category relationships freeze could be unduly burdensome.[30] This proposal would not impose burdens on carriers. The costs associated with completing a basic cost study do not impose an undue burden. But losing the ability to accurately recoup costs imposes tremendous financial burdens on carriers that the Commission should alleviate as soon as possible.

The Commission states that the use of "frozen" category relationships and allocation factors frees carriers from conducting separations studies for the duration of the freeze,[31] but the realized cost savings from not having to conduct such studies are insignificant for a company like Terral. As a ROR ILEC that has not opted into ACAM, Terral still must do much of the work associated with an annual cost separations study each year. Approximately 90 percent of the work and cost for a basic cost separations study must be done to comply with requirements regarding property records, switched and special circuit inventories, and network diagrams – requirements with which Terral must comply. The freeze has not resulted in significant administrative cost savings or alleviated the burden of maintaining such records. If Terral is allowed to unfreeze its categorical relationships, it would maintain the same processes it uses now to keep track of costs – the administrative burden would be unchanged.

[30] *FNPRM* at ¶ 40.
[31] *FNPRM* at ¶ 9.

e. The Commission Should Impose Measures to Prevent Carriers that Opt Out of the Category Relationships Freeze from Double-Recovering Costs Through End-User Charges and Connect America Fund Intercarrier Compensation Support.

The Commission notes that "there is a risk that, as a carrier moves costs from the interstate switched access category into different categories, it could double-recover the same costs—once through CAF ICC support and again through special access rates and related NECA settlements," and seeks comment on whether it should impose measures to prevent carriers that opt out of the category relationships freeze from double-recovering costs.[32] To prevent a double recovery, in granting a waiver of the category relationships freeze to Eastex, the Bureau required Eastex to recalculate its 2011 Rate-of-Return Carrier Base Period Revenue ("BPR") using actual, unfrozen categories and to file a revised interstate switched access revenue requirement.[33]

It is Terral's understanding that, in the Eastex matter, Eastex's switched access costs decreased – a situation in which double recovery would have been possible. If the Commission lifts the category relationships freeze, Terral's switched access costs will increase – rendering double recovery concerns moot as applied to Terral. Nonetheless, Terral appreciates the Commission's concerns regarding double recovery and supports the proposed measures to avoid it.

f. The Federal-State Joint Board on Jurisdictional Separations is Unlikely to Resolve Jurisdictional Separations Reform.

With the *2001 Separations Freeze Order*,[34] the Commission froze the Part 36 separations rules for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first. The Commission has

[32] *FNPRM* at ¶ 28.
[33] *FNPRM* at ¶ 29; *see also Eastex Waiver Order*, 27 FCC Rcd at 6363-64, at ¶¶ 19-20.
[34] *See generally 2001 Separations Freeze Order*.

extended the separations freeze seven times, with the most recent extension set to expire on December 31, 2018.[35] Carriers subject to the category relationships freeze have been subject to that freeze for twelve years longer than they anticipated – twelve years in which comprehensive separations reform has not been accomplished and communications infrastructure has evolved dramatically.

Earlier this year, Federal Chair of the Federal-State Joint Board on Jurisdictional Separations[36] ("Joint Board") FCC Commissioner O'Rielly indicated that comprehensive separations reform will not be accomplished. He stated "[o]n the larger separations front, I am disappointed to note that the Joint Board is unlikely to come to a satisfactory conclusion on its referral to review and consider recommendations pertaining to longer-term [jurisdictional separations] reform."[37] Further, Commissioner O'Rielly concluded that "that the viewpoints are so vastly different on this complex issue that finding commonality is not going to [sic] possible

[35] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 32 FCC Rcd 4219 (2017); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 29 FCC Rcd at 6470 (2014); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 27 FCC Rcd 5593 (2012); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 26 FCC Rcd 7133 (2011); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 25 FCC Rcd 6046 (2010); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 24 FCC Rcd 6162 (2009); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516, 5517, 5523, at ¶¶ 1, 16 (2006).

[36] *Federal-State Joint Board on Jurisdictional Separations*, Order, CC Docket No. 80-286, FCC 17-9 (rel. Feb. 7, 2017) (appointing FCC Commissioner Michael O'Rielly as the Federal Chair of the Federal-State Joint Board on Jurisdictional Separations).

[37] *Comprehensive Review of the Part 32 Uniform System of Accounts, Jurisdictional Separations and Referral to the Federal-State Joint Board*, Notice of Proposed Rulemaking, WC Docket No. 14-130, CC Docket No. 80-286, FCC 18-22, Statement of Commissioner O'Rielly (rel. Feb. 22, 2018) ("*Commissioner O'Rielly Statement*").

in the near term."[38] Accordingly, if the Commission does not adopt its one-time freeze opt-out proposal, impacted carriers' current category relationships will remain frozen indefinitely, to the detriment of both them and their customers.

Terral appreciates Commissioner O'Rielly's frank assessment.[39] Whereas the jurisdictional separations freeze affects all ROR carriers, the category relationships freeze impacts only the much smaller segment of carriers that opted into the freeze 17 years ago. The unfairness to such carriers of extending the freeze this long is particularly severe, given the substantive harm caused to such carriers by the continuation of the freeze and the lack of harm to anyone else. Any perceived negative impacts resulting from a lifting of the freeze would be minimal – due to the limited number of carriers affected.

Because the Joint Board and Commission are not able to accomplish comprehensive separations reform, lifting the category relationships freeze is the only way that affected carriers will be able to manage their businesses going forward. Terral agrees that "absent a Joint Board consensus approach," the Commission must act to "pave the way for market forces, technological changes, and consumer preferences to ultimately resolve longer-term separations issues."[40] As such, Terral urges the Commission to adopt its proposal to allow carriers that elected the category relationships freeze an opportunity to change their election, and to do so without delay.

[38] *Commissioner O'Rielly Statement*.
[39] *Id.*
[40] *Id.*

III. THE COMMISSION SHOULD DEFINE "SPECIAL CIRCUMSTANCES" AND INSTITUTE A TIME CLOCK IN RELATION TO CATEGORY RELATIONSHIPS FREEZE WAIVER REQUESTS.

In adopting the *2001 Separations Freeze Order*, the Commission anticipated that its "waiver process [would] provide a mechanism for relief when special circumstances warrant a deviation from the freeze."[41] However, the waiver process has proved inadequate in this instance, and Terral accordingly urges the Commission to adopt its proposal to allow all affected carriers to unfreeze their category relationships via an order in this proceeding, rather than rely on its waiver process. Terral's *Waiver Petition* is one of two that is pending before the Commission regarding this issue. It has been pending for six years; the other has been pending for more than five years.[42] Allowing waiver requests to languish for such extended periods of time, with no end in sight, does not provide carriers with the relief anticipated by the Commission in 2001.

If the Commission does not allow all affected carriers to unfreeze their category relationships in this rulemaking, Terral urges the Commission to act with haste on the pending waiver petitions. Further, Terral urges the Commission to define those "special circumstances" that warrant a deviation from the freeze and/or "particular facts or circumstances" to consider in assessing whether a carrier has demonstrated sufficient good cause to justify a waiver. Such "special circumstances" could include: service in or near Tribal areas, service to low-population areas (as defined by population density), and service to remote areas (as defined by distance from a metropolitan area). By clarifying the circumstances it deems to warrant a waiver of this particular requirement, the Commission will allow carriers to tailor the requests to provide the

---

[41] *FNPRM* at ¶ 35; *see also 2001 Separations Freeze Order*, 16 FCC Rcd at 11407, at ¶ 52.

[42] Petition of Pioneer Telephone Cooperative, Inc. for Waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships, CC Docket No. 80-286 (Mar. 20, 2013).

information that the Commission will need to make its waiver determination, and thereby expedite the waiver process.

In the event that the Commission does not allow all affected carriers to unfreeze their category relationships in this rulemaking, Terral also encourages the adoption of a "shot clock" time period during which the Commission must rule upon a waiver seeking relief from the category relationships freeze. Such a shot clock should require the Commission to act on a waiver request within one year from the date the waiver petition is received. For pending waiver petitions, this shot clock should be applied retroactively, such that the Commission renders a decision within 90 days. This time limitation would prevent petitions from languishing and creating uncertainty for petitioners. Since Terral filed its waiver petition, the disparity between existing expenses and investment and the proper recovery of those costs has only increased. This disparity has caused significant regulatory uncertainty and has impeded broadband adoption in Terral's service area.

IV. CONCLUSION.

For the reasons discussed above, Terral urges the Commission to adopt the *NPRM*'s proposal to allow carriers that elected the category relationships freeze an opportunity to change their election, and to do so without delay. If the Commission does not allow all affected carriers to unfreeze their category relationships in this rulemaking, Terral urges the Commission to act with haste on the pending waiver petitions, define those "special circumstances" that warrant a deviation from the freeze and/or "particular facts or circumstances" to consider in assessing whether a carrier has demonstrated sufficient good cause to justify a waiver, and adopt a one year "shot clock" during which waiver petitions seeking relief from the category relationships freeze must be decided.

Respectfully submitted,

TERRAL TELEPHONE COMPANY, INC.

By: *\/s\/ Michael R. Bennet*

Michael R. Bennet
Erin P. Fitzgerald
Womble Bond Dickinson (US) LLP
1200 Nineteenth Street, NW
Suite 500
Washington, DC 20036
(202) 857-4442
Michael.Bennet@wbd-us.com

Its Attorneys

August 27, 2018