

**BEFORE THE  
FEDERAL COMMUNICATIONS  
COMMISSION WASHINGTON, DC 20554**

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

**COMMENTS OF USTELECOM**

Pursuant to the Further Notice of Proposed Rulemaking (FNPRM) adopted in this docket,<sup>1</sup> (USTelecom)<sup>2</sup> respectfully submits these comments in support of the Commission’s proposal to extend the current freeze of jurisdictional separations category relationships and cost allocation factors for rate-of-return incumbent local exchange carriers (ILECs) that originated in 2001<sup>3</sup> so long as it is in conjunction with the approval of the proposal to allow carriers with frozen category relationships the opportunity to unfreeze those to adjust their rates.<sup>4</sup>

Historically, one of the primary purposes of the separations process has been to prevent incumbent LECs from recovering the same costs in both the interstate and intrastate jurisdictions. In 2001, the Commission adopted a recommendation by Joint Board to impose an interim freeze of the Part 36 category relationships and jurisdictional cost allocation factors, pending

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<sup>1</sup> See *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking, FCC 18-99 (Jul. 16, 2018) (FNPRM).

<sup>2</sup> USTelecom is the nation’s leading trade association representing service providers and suppliers for the broadband innovation industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications and broadband services to hundreds of millions of customers around the world.

<sup>3</sup> *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382, 11387–88, para. 9. (2001) (*2001 Separations Freeze Order*). Category relationships are the percentages of a carrier’s costs for equipment and investment, recorded in Part 32 accounts, that are assigned to various Part 36 categories based upon how the equipment or investment in that category was used. With the imposition of the freeze on category relationships, carriers with frozen category relationships no longer adjust the assignment of costs to Part 36 categories based upon how the equipment or investment is being used, and instead assign costs to Part 36 categories in the same percentages as they had immediately before the freeze, even if the proportion of equipment or investment used for those categories of service changed. See 47 C.F.R. Part 32, Part 36. Jurisdictional allocation factors allocate costs assigned to Part 32 accounts for jointly used plants between the interstate (federal) and intrastate (state) jurisdictions. *Jurisdictional Separations Reform and Referral to Federal-State Joint Board*, CC Docket No. 80-286, Recommended Decision, 15 FCC Rcd 13160, 13172, para. 20 (2000).

<sup>4</sup> See FNPRM at para 23.

comprehensive reform of the Part 36 separations rules and concluded that this freeze would provide stability and regulatory certainty for carriers by minimizing any impact on separations results that might occur as a result of circumstances not contemplated by the Commission's Part 36 rules, such as growth in local competition and new technologies.<sup>5</sup> Accordingly, the Commission froze all Part 36 category relationships and allocation factors for price cap carriers and all allocation factors for rate-of-return carriers that elected to participate.<sup>6</sup> When reform did not get off the ground, the Commission adopted orders in 2006 and, again, in 2009 and 2010, extending the freeze of Part 36 category relationships and jurisdictional cost allocation factors.<sup>7</sup>

When the Commission extended the separations freeze in 2012, USTelecom commented that it was in favor of the freeze extension not just for two years, but preferably for the indefinite future.<sup>8</sup> USTelecom continues to support extension of the existing freeze, (with the caveat regarding category relationships noted in response to another FNPRM in this docket),<sup>9</sup> because all of the reasons to implement the initial freeze remain true today, and industry, market and technological developments have occurred at an even greater speed with more implications for the elimination of separations than could have been imagined almost two decades ago. The current system of jurisdictional separations is increasingly irrelevant in today's world of converged, any-distance communications services and applies only to a small subset of all regulated lines. Therefore, there really is no need to "fix" the separations system since they have become increasingly irrelevant and unnecessary over the long term. Additionally, implementing any major rule change scheme to jurisdictional separations would be a tremendous misallocation of resources since as the years

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<sup>5</sup> *2001 Separations Freeze Order*, 16 FCC Rcd at 11389–90, para. 12.

<sup>6</sup> The frozen category relationships and allocation factors are based on data from the carriers' calendar year 2000 separations studies. *Id.* at 11387–88, para. 9.

<sup>7</sup> *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 (2006) (*2006 Separations Freeze Extension Order*); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 24 FCC Rcd 6162 (2009) (*2009 Separations Freeze Extension Order*); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 25 FCC Rcd 6046 (2010) (*2010 Separations Freeze Extension Order*).

<sup>8</sup> See USTelecom Comments *In the Matter of Jurisdictional Separations and Referral to Federal State Joint Board*, CC Docket No. 80-286, (filed Apr. 5, 2012).

<sup>9</sup> See USTelecom Comments *In the Matter of Jurisdictional Separations and Referral to Federal State Joint Board*, CC Docket No. 80-286, (filed Apr. 17, 2017).

have gone on the rules have become inapplicable to the providers that serve the vast majority of all access lines and recent reforms have all but eliminated separations for many providers. Therefore, instead of trying to fix the separations rules, the Commission should indefinitely extend the separations freeze and focus on fully implementing all of recent changes to intercarrier compensation and universal service reform.

That said, holding certain carriers hostage to a category relationship freeze election they made 17 years ago is inequitable and unnecessary. This current FNPRM asks a variety of questions about the advantages and drawbacks that should be considered in allowing carriers to unfreeze, including whether additional waivers would be necessary if the “opt-out” proposal is not adopted.<sup>10</sup> The purpose of allowing carriers to “opt-in” to a freeze of their category relationships in 2001 was to provide them an opportunity for “simplification and stability.”<sup>11</sup> Carriers were given flexibility to decide, but that decision was necessarily based on the circumstances they could reasonably forecast in 2001. As we have repeatedly commented, the passage of 17 years in a rapidly changing industry necessarily means that no carrier’s forecast is likely to be currently valid and the net benefits of simplification and stability no longer exist.<sup>12</sup> Thus, the purpose of the category freeze is no longer served.

It does not make sense nor is it equitable to require carriers to continue to keep their frozen categories rather than allow those companies to set rates that accurately reflect their costs. In fact, in multiple instances where the Commission has granted waivers of the interim separations freeze, the Commission has determined that it is in the public interest to allow companies to unfreeze their category relationships specifically because allowing the petitioning

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<sup>10</sup> See FNPRM at paras. 28-35.

<sup>11</sup> See *Separations Freeze Order* at 1144, para. 21.

<sup>12</sup> See USTelecom Comments *In the Matter of Jurisdictional Separations and Referral to Federal State Joint Board*, CC Docket No. 80-286, (filed Apr. 5, 2012); USTelecom Comments *In the Matter of Jurisdictional Separations and Referral to Federal State Joint Board*, CC Docket No. 80-286, (filed Apr. 17, 2017); USTelecom Comments *In the Matter of Jurisdictional Separations and Referral to Federal State Joint Board*, CC Docket No. 80-286, (filed May 24, 2017).

companies to unfreeze their category relationships would permit the affected companies to “more accurately allocate its investment and will encourage further network upgrades.”<sup>13</sup>

The Commission has expressed in multiple decisions in this proceeding,<sup>14</sup> a reluctance to allow carriers to unfreeze their category relationships and/or grant multiple waivers without considering the potential collective impact of such requests on rates and the Universal Service Fund.<sup>15</sup> While stability is clearly an important policy objective, there are currently only approximately 43 companies with frozen category relationships<sup>16</sup> and only a smaller subset of those – about 26 companies – have elected A-CAM for whom the only impact is on special access. In fact, some of those companies have had pending waiver requests to unfreeze these category relationships for several years.<sup>17</sup> Because the number of companies at issue, any shifts in the switched access revenue requirement could be offset through CAF ICC adjustments for double recovery and shifts in the common line revenue requirement will only impact the individual carrier, the net effects of allowing those companies to optionally unfreeze their category relationships will have little effect on other carrier.

In fact, in granting Eastex’s waiver, the small effect on the Universal Service Fund was one of the key factors in permitting the waiver.<sup>18</sup> Due to the small subset of carriers involved

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<sup>13</sup> See *In the Matter of 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*, CC Docket No. 80-286, Order 27 FCC Rcd 6357, 6361, para. 12 (Jun. 15, 2012) (*Eastex Waiver Order*).

<sup>14</sup> See *In the Matter of 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*, CC Docket No. 80-286, Report and Order, 25 FCC Rcd 17459, 17464–65, paras 12–13 (Nov. 30, 2010).

<sup>15</sup> See *Eastex Waiver Order* at 6; *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order 32 FCC Rcd 4219, 4223 (2017) (2017 Separations Freeze Extension Order).

<sup>16</sup> See Comments of the National Exchange Carrier Association, Inc.; NTCA – The Rural Broadband Association; ITTA; Eastern Rural Telecom Association; and WTA – Advocates For Rural Broadband, CC Docket 80-286 (Apr. 16, 2014) at 4-5.

<sup>17</sup> See e.g., *Petition of Pioneer Telephone Cooperative, Inc. for Waiver of 47 C.F.R. Sections 26.36.123–126, 36.141, 36.152–57, 36.191 and 36.372–382 to Unfreeze Part 36 Category Relationships*, CC Docket No. 80-286 (Mar. 20, 2013).

<sup>18</sup> See *Eastex Waiver Order* at 6 (“the net shift of allocated costs permitted by this order will have only a *de minimis*


and the small amount of support at issue, the same treatment is warranted at this time. Rather than require these companies to continue to have rates that do not properly reflect reality, they should be permitted to unfreeze their category relationships immediately so as to reflect the revised category relationships consistent with the Commission's rules.

With respect to timing, the Commission should make this is a one-time opportunity such that conforming changes be made in time to be effective on the July 1, 2019 so long as the Commission acts quickly enough (i.e. by October 1, 2018) in this proceeding to allow carriers adequate time to notify the Commission and/or NECA by March 1, 2019. That said, if carriers will be required to unfreeze and re-freeze their category relationships then the time period for the new freeze should be set at 5 years and that date should be kept regardless of anything else taking place in this docket so that what has transpired in this proceeding thus far does not reoccur. As stated herein, when carriers froze their category relationships initially, they did so in expectation that it would be for 5 years, a time period for which forecasting is reasonable. If a category relationships freeze is allowed to continue past that point then rates will once again not accurately reflect market realities.

USTelecom agrees that extending the freeze for at least 15 years, if not indefinitely, is warranted for its potential overall impact on the bulk of carriers. However, for those carriers that wish to unfreeze their category relationships right away, USTelecom urges the Commission to act promptly to allow them to do so. Providing carriers this opportunity would be consistent with the intent of the rule, as well as the Commission's express commitment to providing certainty, stability, and predictable support as part of the overall reform framework, and would help carriers meet the Commission's goals for improvement and extension of broadband facilities and service.

Respectfully submitted,

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