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
THE CONCERNED RURAL LECS

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I. INTRODUCTION AND SUMMARY

The Concerned Rural LECs hereby submit these comments in response to the Further Notice of Proposed Rulemaking ("FNPRM") in CC Docket No. 80-286 released on July 18, 2018.[2] The Concerned Rural LECs are a diverse group of rate-of-return ("RoR") incumbent local exchange carriers ("ILECs") that serve rural communities throughout the United States.

The Concerned Rural LECs are supportive of the FCC's proposal to extend the freeze of the Part 36 separations rules provided that RoR carriers that chose to freeze their category relationships are given significant flexibility to opt out of that freeze. In addition, during the freeze extension, it is important that the Joint Board continue to work on a recommendation for comprehensive separations reform so that cost recovery from the inter- and intrastate jurisdictions can be aligned with current technology and services.

[1] The Concerned Rural LECs consist of the incumbent local exchange carriers individually identified in Appendix A.
[2] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking, FCC 18-99 (rel. July 18, 2018) (*Separations Freeze FNPRM*).

RoR carriers that elected to freeze their category relationships in 2001 should be permitted to unfreeze those category relationships at any date in the future. This is appropriate given the proposed length of the freeze extension as well as differences in the time it will take companies to study the effects of unfreezing. The Commission should also clarify that its rules permit carriers that have frozen category relationships to directly assign costs to new categories introduced following the inception of the separations freeze. This would likely circumvent the need for many companies that elected to freeze their category relationships to unfreeze them and begin developing categorization studies. In addition, the Commission should allow carriers with frozen category relationships to choose among three approaches for determining and preventing double recovery of switched access-related costs. Furthermore, the Commission should permit carriers not presently subject to a category relationship freeze to elect to do so based on current category relationships. Finally, the Commission should not unfreeze traffic factors at this time due to the limited impact that they have on cost recovery and the significant administrative burden to companies of doing so. However, carriers should have the option to update factors associated with local business office expenses to better reflect the services provided in today's broadband world.

II. EXTENSION OF THE EXISTING SEPARATIONS FREEZE

A. A 15-year extension of the separations freeze is appropriate so long as the Commission provides RoR ILECs with frozen category relationships significant flexibility to opt out of that freeze

The Commission has proposed to extend the existing freeze of the Part 36 separations rules for 15 years. This is, in large part, due to the fact that the Federal-State Joint Board on Jurisdictional Separations ("Joint Board") has been unable to produce a recommendation for comprehensive separations reform since the Commission first adopted the freeze in 2001. Upon

the Concerned Rural LECs' initial review, a 15-year freeze seemed too long, as it fails to provide the Joint Board with sufficient incentive to work toward consensus on a recommendation for comprehensive reform of the existing outdated separations rules. However, for reasons discussed in greater detail below, the most important issue raised in the FNPRM is allowing companies subject to a category relationships freeze the opportunity to unfreeze those category relationships so that their cost recovery may be based on current technologies and services. So long as the Commission affords these companies ample flexibility to unfreeze their category relationships, then the Concerned Rural ILECs support the extension of the broader separations freeze for a period of up to 15 years.

B. The Joint Board should continue to work on a recommendation for comprehensive separations reform in order to align cost recovery from the inter- and intrastate jurisdictions with current technology and services

The concern that the Concerned Rural LECs have with a 15-year extension of the separations freeze is that the freeze does not separate costs based on current technologies, services and customer demand. Not only can this result in costs being assigned to the wrong services, but it can also result in costs being assigned to the wrong jurisdiction, which can have unintended and harmful ramifications for RoR carriers. Therefore, it is important that the Joint Board continue to focus on developing a recommendation for comprehensive separations reform that will allow cost recovery from the inter- and intrastate jurisdictions to be properly aligned with today's technologies and services.

The separations freeze was adopted in 2001 and is based on traffic factors, and in some cases category relationships, from 2000. For most companies this means that their cost separations are now incorrectly skewed to voice services, which results in a significant amount of costs being incorrectly assigned to the intrastate jurisdiction. This is due to the fact that a

large portion of network facilities are jointly used in the provision of voice and broadband services and RoR carriers that participate in the National Exchange Carrier Association ("NECA") pools are required by NECA to allocate costs based on customer counts rather than bandwidth. In addition, NECA has interpreted the FCC's 2001 Separations Freeze Order to not allow companies with frozen category relationships to directly assign the growing costs of broadband to the interstate jurisdiction (see Section III.C. *infra*). The result is typically a significant allocation of costs to voice services and the intrastate jurisdiction, when actual utilization of the network continues to shift to broadband, which is an interstate service. This can be problematic for many RoR carriers because state commissions are inconsistent in their application of the FCC's separations rules and many states do not have state universal service funds to assist in the recovery of intrastate costs.

The Concerned Rural LECs recognize that comprehensive separations reform is not a simple task; if it was, it would have been accomplished by now. Nevertheless, the Joint Board should continue to pursue consensus on a recommended decision with the goal of shortening the proposed 15-year freeze and having the Commission adopt rules that produce more accurate separations results.

III. COMPANIES WITH FROZEN CATEGORY RELATIONSHIPS

A. RoR carriers subject to the category relationships freeze should be permitted to unfreeze their category relationships at any date in the future

RoR carriers with currently frozen category relationships should be allowed to opt out of that freeze at any date they choose while the overall freeze is ongoing. RoR carriers that elected to freeze their category relationships in 2001 did so with an expectation that it would be for five years, which was supposed to be the maximum duration of the separations freeze according to the 2001 Separations Freeze Order. Seventeen years and seven freeze extensions later, the vast

majority of these companies are still separating their costs based on the technologies and services that were in place in 2000, which for most have drastically changed in the intervening years. While these companies have had the ability to file for a waiver of the category relationships freeze and two have been granted, other waiver requests have been pending before the Commission for years with no action, which provides a disincentive for additional companies to file for a waiver.

Providing RoR carriers subject to the category relationship freeze with the flexibility to opt out of that freeze at any date they choose is important because each of these companies will have to perform detailed analyses to determine the impacts of unfreezing their categories and prepare documentation that will allow them to begin performing categorization studies. The time and effort to do this will vary among companies as their networks and documentation will have changed drastically since these studies were last performed. A fixed, one-time opportunity for carriers to unfreeze their category relationships may not provide adequate time for some companies to gather the documentation and perform the necessary analyses to determine the impacts. Furthermore, there may be some companies that determine maintaining the freeze on their category relationships is beneficial at the present time, but at a later date during the separations freeze – which may last another 15 years or longer – they find that is no longer the case. Therefore, allowing these carriers the latitude to opt out of the category relationships freeze at any time in the future is appropriate given the proposed length of the freeze extension as well as differences in the time it will take companies to study the effects of unfreezing.

That said, if the FCC chooses to only provide carriers with a one-time opportunity to opt out of the category relationships freeze, then it should also adopt a streamlined waiver process for these companies to petition the Commission to unfreeze their category relationships at a later

date. Companies that find they need to unfreeze their category relationships at some point after the Commission's single opportunity to do so should have a relatively simple process through which they can pursue a waiver of the rules and in which the Commission will issue a decision in an expedited manner.

B. The Commission should confirm that RoR carriers with frozen category relationships are permitted to directly assign costs to new categories introduced after the inception of the separations freeze

There may be an alternate solution that would negate the need for RoR carriers with frozen category relationships to unfreeze them. Many companies that opted to freeze their category relationships in 2001 were not offering broadband, or were just beginning to do so, in 2000, which is the base year of the freeze. This has resulted in many of these companies having very little, if any, of their costs assigned to their broadband services, which have been continually growing since that time. As discussed above, this has led to an over-assignment of costs to voice services that were far more dominant in 2000 than they are today.

However, this does not need to be the case. Under a reasonable interpretation of the 2001 Separations Freeze Order, the Commission could allow companies with frozen category relationships to directly assign their investment in broadband to the interstate jurisdiction, rather than including this category of investment in the frozen categories with little or no allocation to broadband. Broadband is a category of investment that is normally directly assigned, and the 2001 Separations Freeze Order specifically indicated that categories that have been directly assigned in the past would continue to be directly assigned to each jurisdiction throughout the freeze.[3]

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[3] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 01-162 (rel. May 22, 2001), para. 23 (*2001 Separations Freeze Order*).

The issue here has been that NECA has interpreted that direct assignment is not permitted for categories of investment that did not exist prior to the separations freeze, and that the only remedy for companies with frozen category relationships is to unfreeze their categories, introduce the new category of investment, and then refreeze the categories. In addition, NECA's interpretation of the rules has required that new investment is required to introduce a new category, and that existing investment that is subsequently used in the provision of a new service may not be assigned to a new category under the separations freeze. This interpretation does not allow companies with frozen categories to accurately assign costs to the new service, as it locks the cost assignment in at a point in time (the year the new category is introduced), does not allow for growing adoption of the new service, and does not allow existing common investment to be assigned to the new service.

In a 2016 Petition for Clarification,[4] Endeavor Communications laid out the details of this issue. Specifically, it explained how the Commission's orders on the separations freeze and the Part 36 rules allow carriers that opted to freeze their category relationships to directly assign costs to new categories introduced following the inception of the freeze if that category is ordinarily directly assigned under Part 36. USTelecom provided comments in support of Endeavor's Petition for Clarification at the time. Were the Commission to act on this Petition and provide the clarification Endeavor is seeking, it would likely circumvent the need for many companies that elected to freeze their category relationships to unfreeze them and begin performing the resource intensive work that is necessary to develop categorization studies.

[4] Petition for Clarification of Endeavor Communications, CC Docket No. 80-286 (fil. Feb. 26, 2016).

C. The Commission should allow RoR carriers with frozen category relationships to choose the approach taken for determining and preventing double recovery of switched access-related costs

The Concerned Rural LECs understand that any company with frozen category relationships that chooses to unfreeze those categories will shift costs among all of the services they provide, including switched access. In the 2001 USF/ICC Transformation Order, the FCC froze the costs associated with the provision of switched access utilizing 2011 and 2012 forecasted costs, instituted a five percent annual reduction in cost recovery for these services, and established Connect America Fund Intercarrier Compensation ("CAF ICC") support to make up any shortfall in cost recovery. As a result, the Commission requires that any changes in the categorization of existing investment that was included in RoR carriers' 2011 and 2012 forecasted costs be analyzed to determine if it will result in any double recovery of those costs. To the extent that a change in categorization does result in double recovery, the company is required to reduce the amount of CAF ICC support that it receives in order to eliminate the double recovery.

For companies that would now choose to unfreeze their category relationships, there would almost certainly be double recovery of costs, and the Concerned Rural LECs believe there are at least three approaches that can be taken to address it. The first approach is to follow the analysis and methodology outlined by NECA for annual CAF ICC filings. This approach requires that companies analyze the impacts of a categorization change on the switched access revenue requirement in the year of the change, determine the percentage variance in the switched access revenue requirement in the year of the change, and then apply this percentage change in the switched access revenue requirement to the frozen costs based on 2011 and 2012 forecasted costs. The second approach is to follow the methodology that the Commission required of

EasTex Telephone Cooperative ("EasTex") in granting its waiver of the category relationship freeze. In this waiver, the Commission generally required that EasTex go back to its 2011 and 2012 costs and recalculate the switched access revenue requirement that would have occurred absent the category relationships freeze and adjust its CAF ICC support to reflect the revised switched access revenue requirement. The third approach is a hybrid of approaches one and two, which would allow companies to analyze the difference in the switched access revenue requirement in the year of the change and use the absolute variance as the amount of double recovery, rather than carrying those impacts back in time.

Of the three approaches outlined above, the second and third are more likely to produce more accurate results than the first. The second method is more accurate because it is based on the cost study that was utilized to freeze the switched access revenue requirements. The third method is more accurate because it eliminates anomalies that can result due to the natural changes in the switched access revenue requirement that can take place over time. The first approach, however, can result in a nominal change in categorization producing a very significant percentage variance in the current revenue requirement.

The Commission should give companies that opt to unfreeze their category relationships the flexibility to determine which of the three approaches to eliminating double recovery that they will follow, as not all companies will have the ability to go back to 2011 and 2012 cost studies to recalculate their costs. For example, companies that have been acquired or that have changed costs consultants may lack sufficient documentation to go back and recalculate their 2011 and 2012 revenue requirements. In addition, the NECA methodology utilizing the percentage change in current revenue requirement may produce inappropriately large double recovery when applied to the revenue requirement based on 2011 and 2012 costs.

D. The Commission should allow RoR carriers not currently subject to the category relationship freeze to do so based on current category relationships

One of the major reasons the Commission permitted RoR carriers to freeze their category relationships in 2001 was that performing categorization studies is a resource intensive process and freezing category relationships saves significant human and financial resources. With this in mind, and as a result of the significant evolution of broadband technologies and services, the Commission should offer those RoR carriers that did not opt to freeze their category relationships in 2001 the opportunity to freeze them based on current category relationships. Given that switched access costs are already frozen and phasing down for all RoR carriers and common line cost recovery is essentially frozen for A-CAM carriers, freezing the remaining separations categories may now prove appealing for more companies.

The Concerned Rural LECs recognize that the Commission is considering optional price cap regulation of business data services for A-CAM carriers, which would produce similar results to a category relationship freeze for these companies. An optional category relationships freeze based on current category relationships would extend similar benefits to CAF BLS recipients.

IV. FROZEN TRAFFIC FACTORS

A. The Commission should not unfreeze traffic factors at this time due to the limited impact that they have on cost recovery and the significant administrative burden to companies of doing so

Traffic factors are the minute-of-use based factors that are utilized to jurisdictionally separate costs assigned to voice-related services. A significant portion of these costs are assigned to switched access and transport services, which, as discussed above, were frozen based on the forecasted revenue requirement for these services in 2011 and 2012 and are phasing down by five percent each year. Another significant portion of voice-related costs, the local loop, is

jurisdictionally separated based on a traffic factor (the "Subscriber Plant Factor") that was frozen at 75 percent intrastate and 25 percent interstate long before 2001. In addition, due to the significant and ongoing deployment of broadband services, investment in voice services is diminishing over time. Thus, the costs of voice services that are jurisdictionally separated based on traffic factors are becoming a smaller and smaller issue each year.

In addition, it should be noted that the development of traffic factors is something of an arcane science. Because companies have generally not been required to develop traffic factors since they were frozen in 2001 based on 2000 data, the expertise necessary to capture the data and perform traffic studies has diminished if not disappeared. In the last 17 years, the experts that performed these studies have either been repurposed or retired, and it would be difficult to re-establish this expertise. As a result of the diminishing impact of traffic factors and the cost of re-establishing the expertise necessary to perform traffic studies, the Commission should extend the freeze of these factors for the proposed 15 years.

Having said this, there are certain factors the Commission should unfreeze due to their ongoing relevance in the separations process and the significant changes in services that have taken place over the years. These factors are primarily associated with local business office expenses, many of which are based on services that are far less relevant today than they were in 2000 and have been replaced by new services that were not prevalent in 2000. For example, the frozen allocation of local business office expenses still takes into account coin collection from payphones and the billing of toll services for other providers, when these services are very rare today. These are factors that companies should at least have the option to update to better reflect the services provided in today's broadband world.

V. CONCLUSION

For the reasons discussed above, the Concerned Rural LECs offer the following recommendations:

- The Commission should extend the separations freeze for 15 years so long as it provides companies with frozen category relationships with ample flexibility to unfreeze those relationships.

- The Joint Board should continue to work on developing a recommendation for comprehensive separations reform during the freeze extension that would better align cost recovery from the state and interstate jurisdictions with the current state of technology and customer demand for services.

- The Commission should provide companies with currently frozen category relationships with the flexibility to unfreeze those relationships at any date they choose while the overall the freeze is ongoing. This is appropriate given the proposed length of the freeze extension as well as differences in the time it will take companies to study the effects of unfreezing.

- The Commission should grant the Petition for Clarification filed by Endeavor Communications in 2016, confirming that carriers with frozen category relationships are permitted to directly assign costs to new categories introduced following the inception of the freeze if that category is ordinarily directly assigned under Part 36. This would allow companies to maintain frozen categories while still updating separations factors to reflect the provision and proliferation of broadband services.

- The Commission should provide companies with frozen category relationships flexibility in the method used for calculating and preventing double recovery that may occur when those relationships are unfrozen. There is no one appropriate methodology for all situations, and these comments outline three methodologies that reasonably address varying situations.

- The Commission should provide RoR carriers that opted not to freeze their category relationships in 2001 an opportunity to do so based on current category relationships. This would simplify the cost separations process and reduce the associated burden for companies that elect to participate.

- Traffic factors, with the exception of local business office expense factors, should remain frozen for another 15 years. This will reduce the potential burden of calculating voice-related traffic factors that are decreasingly impactful each year, while also allowing companies to update allocations of local business office expenses based on more current services.

Respectfully Submitted,

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APPENDIX A: The Concerned Rural LECs

ACI/Pathway Com-Tel

ATC Communications

Calaveras Telephone Company

Cap Rock Telephone Cooperative, Inc.

Chickasaw Telephone Company

Eagle Telephone System, Inc.

Filer Mutual Telephone Company

InterBel Telephone Cooperative, Inc.

MTE Communications

Nortex Communications

Penasco Valley Telephone Cooperative

Project Mutual Telephone Cooperative

Santa Rosa Telephone Cooperative

South Central Rural Telephone Cooperative

Volcano Telephone Company

Wiggins Telephone Association