



**COLORADO**

**Department of  
Regulatory Agencies**

Public Utilities Commission

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Jeffrey Ackermann, Chairman  
Frances A. Koncilja, Commissioner  
Wendy M. Moser, Commissioner  
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September 5, 2018

Chairman Ajit Pai  
Commissioner Michael O'Reilly  
Commissioner Brenden Carr  
Commissioner Jessica Rosenworcel  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

RE: Notice of Written Ex Parte filed in the proceedings captioned:

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

In the Matter of Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers, WC Docket No. 17-144

Commissioners:

Thank you for your recent emails of August 15 and 16 seeking State input on two separations proceedings pending before the FCC. These two proceedings are (1) the Notice of Proposed changes to 47 CFR Part 36, referencing proposals in the WC Docket No. 17-144 proceedings, and (2) the CC Docket No. 80-286 proceeding.

While we appreciate the direct outreach, there is no question that both rulemakings will require changes to the separations' rules, as your letters concede. Yet, in neither of the referenced proceedings, has the FCC sought the required Joint Board recommendation.

We wholly support the cooperative federalism approach Congress embedded in the Communications Act, which calls for a subset of dedicated State commissioners to weigh in as the majority of a Separations Joint Board before the FCC can change those rules. It is crucial that the FCC issue for comment the Recommended Decisions of the Separations Joint Board. State Commissioners rely on the State Members of the Separations Joint Board to represent the States' interests on the merits of any proposed FCC separations change via Joint Board recommendations. State resources are stretched thin these days and the emails of August 15 and 16 may have gone unnoticed by many States.

In both of your recent emails, you reference 47 USC § 220(i). That section specifies that the FCC "shall" notify and provide a reasonable opportunity to comment to each State commission having jurisdiction over any carrier involved before issuing a final rule in both these proceedings. Similarly, 47 USC §§ 410(c) specifies that the FCC "shall refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it institutes pursuant to a notice of proposed rulemaking . . . to a Federal-State Joint Board."

Section 410(c) is not ambiguous on the requirement for a referral for a recommended decision. The FCC should not act in either proceeding absent a Joint Board recommendation



At the Summer NARUC Meeting held in Arizona, Colorado endorsed the unopposed July 2018 NARUC resolution recommending that (i) the FCC extend the current freeze for no more than two years, but only after consulting with all federal and State members of the Separations Joint Board to recommend such action, and (ii) the FCC should, as per Section 410(c), refer the "unfreeze" proposals to the Separations Joint Board before taking final action.

Again we appreciate your outreach. Please contact Colorado Commissioner Wendy Moser if you have any questions or concerns about this letter.

Respectfully submitted,



Jeffrey Ackerman, Chairman



Frances Koncilja, Commissioner



Wendy M. Moser, Commissioner

Cc: James Bradford Ramsay, NARUC General Counsel