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

PETITION FOR CLARIFICATION
OF
ENDEAVOR COMMUNICATIONS

I. INTRODUCTION

Clay County Rural Telephone Cooperative d/b/a Endeavor Communications (Endeavor) hereby seeks clarification from the Wireline Competition Bureau (Bureau) regarding a matter related to the Part 36 separations freeze adopted in the *2001 Separations Freeze Order*.[1] Specifically, Endeavor seeks clarification that rate-of-return carriers that elected to freeze their category relationships in 2001 are permitted to directly assign costs to new categories of investment introduced subsequent to the inception of the freeze if that category is ordinarily directly assigned in accordance with the Part 36 rules. New categories of investment are generally related to the provision of digital subscriber line (DSL) and wideband special access services, which some companies did not provide prior to 2001. This clarification would be consistent with the Commission's orders on the separations freeze and the Part 36 rules.

[1] *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)(*2001 Separations Freeze Order*).

II. BACKGROUND

Endeavor is a rural, rate-of-return regulated incumbent local exchange carrier (ILEC) serving approximately 9,000 customers in central Indiana with high-quality voice, broadband, video, and other services. Endeavor participates in the revenue pools and tariff administered by the National Exchange Carrier Association (NECA). It therefore submits its separations cost studies to NECA and must conform to NECA's separations policies.

Endeavor is seeking this clarification because it wishes to continue directly assigning its DSL investment costs in its annual cost study. However, NECA contends that in order for a rate-of-return carrier that froze their category relationships to directly assign a category of investment, the category must have existed prior to the freeze and have been directly assigned at the time of the freeze. It is Endeavor's understanding that NECA believes that new categories of investment may not be directly assigned because they did not exist in order to have been directly assigned in the past.

Endeavor has been directly assigning its capital investments in DSL since 2004, when it first began providing DSL service. In its 2004 cost study, the company unfroze the category factors, determined the amount of DSL investment relative to the total, and allocated the remaining 2004 investment based on the previous frozen factors established in 2001. Endeavor consistently applied this methodology for identifying and directly assigning its DSL costs in each of its annual cost studies from 2004 through 2014.[2] *Notably, NECA did not raise any concern about this approach during the 11 year period until they brought it to the company's attention in October 2015*. In addition, as a beneficiary of the High Cost Universal Service Fund (USF) program, Endeavor has been subject to two audits by the Universal Service Administrative

[2] As a participant in NECA's tariff, Endeavor is also required to annually submit to NECA a three-year revenue requirement forecast. Since 2004, Endeavor has directly assigned its DSL capital investments in these forecasted revenue requirements, consistent with how each of its cost studies were prepared.

Company (USAC), and neither of the audits produced any findings related to the company's categorization and direct assignment practices in its cost studies.

The direct assignment of Endeavor's DSL capital investments in its cost study properly reflects the financial resources that the company has committed to providing broadband Internet access within its study area. When Endeavor began offering DSL in 2004, the identified investment reflected a minimal number of DSL customers. Since 2004, however, Endeavor has invested approximately $7.5 million in central office DSL equipment that is currently in service and its DSL customers have increased to over 7,000 as of December 31, 2015. By directly assigning its DSL costs, the company is accurately aligning the increases in broadband subscribership with the network investments it makes to meet that demand.

Endeavor is not suggesting that its categorization approach is the only correct methodology for rate-of-return carriers that elected to freeze their category relationships and does not wish for the Bureau to mandate its approach to the exclusion of all others. Both the approach that Endeavor has taken as well as the methodology that NECA favors should be permissible. However, once a carrier has chosen a methodology, it should be applied consistently in the company's cost studies and revenue requirement forecasts, unless the carrier receives approval for a change in approach from the FCC or NECA. In the past, NECA has enforced a policy that pool members must maintain consistency in the methodologies that they use in their cost study filings and forecasts; carriers should not "flip-flop" between approaches. Yet that is precisely what NECA is now forcing Endeavor to do, after the company has consistently applied its direct assignment approach for 11 years without it being raised as an issue.

III. THE BUREAU SHOULD CLARIFY THAT RATE-OF-RETURN CARRIERS THAT ELECTED TO FREEZE THEIR CATEGORY RELATIONSHIPS ARE PERMITTED TO DIRECTLY ASSIGN COSTS TO NEW CATEGORIES INTRODUCED FOLLOWING THE INCEPTION OF THE SEPARATIONS FREEZE IF THAT CATEGORY IS ORIDNARILY DIRECTLY ASSIGNED UNDER PART 36

From the outset, when the FCC adopted the Part 36 freeze in it *2001 Separations Freeze Order*, it was unambiguous about permitting carriers that had frozen category relationships to directly assign costs to categories that are ordinarily directly assigned under the rules. The *2001 Separations Freeze Order* states:

> **Categories or portions of categories that have been directly assigned in the past, however, will continue to be directly assigned to each jurisdiction. In other words, the frozen factors shall not have an effect on the direct assignment of costs for categories, or portions of categories, that are directly assigned.** Since those portions of facilities that are utilized exclusively for services within the state or interstate jurisdiction are readily identifiable, we believe that the continuation of direct assignment of costs will not be a burden on carriers, nor will it adversely impact the stability of separations results throughout the freeze.[3]

Later in the *2001 Separations Freeze Order*, the FCC explains that as a general rule, adjustments to the separations category relationships and allocation factors are not permitted under the freeze. But it then goes on to make two exceptions to that policy which "present unique circumstances that may occur with some frequency."[4] One of those exceptions is explained as follows:

> Rate-of-return carriers who incur new categories of investment during the freeze shall calculate new factors for the investment and then freeze the new factors for the duration of the freeze. We agree with USTA that, without this exception, some rate-of-return carriers may be precluded from allocating their costs for recovery of the new investment from the proper jurisdictions.[5]

[3] *2001 Separations Freeze Order*, para. 23 (emphasis added).

[4] *Id.*, para. 53.

[5] *Id.* (emphasis added).

Certainly, if a carrier is not permitted to directly assign costs to a new category that is ordinarily directly assigned, the carrier would be precluded from allocating its costs for recovery of the new investment from the proper jurisdiction, inconsistent with the *2001 Separations Freeze Order's* directive.

Moreover, Appendix B of the *2001 Separations Freeze Order* presents a list of category relationships and jurisdictional allocation factors that are to be frozen, including several categories that are directly assigned to jurisdictions pursuant to Part 36. Among them is category 4.11, Wideband Exchange Line Circuit Equipment,[6] which includes DSL capital investment costs.

Taking the two previous statements together, along with the inclusion of directly assigned categories in Appendix B, it is clear that the Commission intended for rate-of-return carriers that elected to freeze their category relationships to be able to directly assign costs to newly introduced categories where those categories are ordinarily directly assigned under the rules.

The Commission's *2014 Separations Freeze Extension Order*[7] only bolsters the case for permitting the direct assignment of costs to new categories. The *2014 Separations Freeze Extension Order* recognizes that "jurisdictional apportionments of categorized costs are based upon either a relative use factor, a fixed allocator, *or, when specifically allowed in the Part 36*

[6] 47 C.F.R. §36.126(c)(1).

[7] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 14-91 (rel. Jun. 13, 2014)(*2014 Separations Freeze Extension Order*).

rules, by direct assignment."[8] It then expands on the possibility of direct assignment in a footnote:

> Because some costs are directly assigned to a jurisdictionally pure service category, i.e. a category used exclusively for either intrastate or interstate communications, both steps [of the jurisdictional separations process] are often performed simultaneously. For example, the cost of private line service that is wholly intrastate in nature is assigned directly to the intrastate jurisdiction. *See* 47 C.F.R. § 136.154(a).[9]

In Endeavor's case, the company wishes to continue directly assigning the capital costs incurred from providing DSL, a wholly interstate service. The Bureau should clarify that the FCC's Part 36 rules, along with the Commission's orders on the separations freeze, permit Endeavor and other similarly situated rate-of-return carriers to do so.

IV. CONCLUSION

For the forgoing reasons, the Bureau should clarify that rate-of-return carriers that elected to freeze their category relationships are permitted to directly assign costs to new categories introduced following the commencement of the separations freeze, provided that such categories are ordinarily directly assigned under the Part 36 rules. This clarification would be consistent with both the FCC's Part 36 rules and its orders concerning the separations freeze. Endeavor and other similarly situated carriers should not be forced to change a methodology they have consistently applied in their cost studies and revenue requirement forecasts since the inception of the separations freeze without any question until now.

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[8] *Id.*, para. 3 (emphasis added).

[9] *Id.*, fn. 7.

Respectfully submitted,

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