

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

In the Matter of)	
)	
Jurisdictional Separations and Referral to the)	WC Docket No. 16-66
Federal –State Joint Board)	CC Docket No. 80-286
)	

**COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

Pursuant to the Wireline Competition Bureau’s Public Notice,¹ the United States Telecom Association (USTelecom)² respectfully submits these comments in support of the Petition for Clarification (Petition) filed February 26, 2016, by Clay County Telephone Cooperative d/b/a Endeavor Communications (Endeavor).³ Endeavor seeks clarification that they and other rate-of-return carriers that elected to freeze their category relationships in 2001

¹ See Public Notice, “Wireline Competition Bureau Seeks Comment on Endeavor Communications’ Petition for Clarification Regarding Direct Assignment of Costs to New Categories By Rate-of-Return Carriers Subject to the Part 36 Separations Freeze (DA 16-257), (rel. Mar. 8, 2016) (WC Docket No. 16-66 and CC Docket No. 80-286).

² USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.

³ See *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board Petition for Clarification of Endeavor Communications*, CC Docket No. 80-286 (Feb. 26, 2016) (Petition).

pursuant to the Separations Freeze Order⁴ 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.

USTelecom asks the Commission to clarify for carriers the appropriate assignment of these costs. As the Commission has acknowledged most recently in its Report and Order reforming rate-of-return Universal Service Fund support, the landscape of services offered and investments made by rate-of-return carriers has changed in an effort to meet increased consumer demand for advanced services.⁵ In the last 12 years there has been a significant increase in new categories of investment that are generally related to the provision of digital subscriber line (DSL) and wideband special access services, which some rate-of-return companies did not provide prior to the 2001 freeze, but is the future of telecommunications investment. As such this request for clarification requires careful consideration. Endeavor notes in its Petition that NECA is asserting that these costs cannot be directly assigned because they did not exist in order to have been directly assigned in the past.⁶ Given that the separations freeze was not intended to last more than 6 years, and now there are new types of costs that were not even considered at the time of the freeze, clarification of this matter going forward is essential.

For years, Endeavor (and other rate-of-return regulated carriers) has been directly assigning DSL investment costs in annual cost studies and it is only until recently that NECA has

⁴ See *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, Report and Order, FCC 01-162 (rel. May 22, 2001) (CC Docket No. 80-826) (Separations Freeze Order).

⁵ See *In the Matter of Connect America Fund*, Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 16-33, para 1 (WC Docket No. 10-90).

⁶ See *Petition* at 2.

questioned that assignment.⁷ The sudden request by NECA to change a methodology of reporting which has accurately reflected the investment over a period of years in and of itself makes it clear that clarification is needed. As Endeavor notes in its Petition they do not seek a ruling that their categorization approach is the only correct methodology for rate-of-return carriers, only that there should be a level of consistency in reporting year after year absent a change mandated by the FCC so as to prevent flip-flopping in methodologies.⁸ Indeed other carriers have sought waiver of the separations freeze rules because there has been an increased demand for interstate services since the freeze was originally implemented and was expected to expire such that it has a material effect on investments.⁹

As noted in the Separations Freeze Order the FCC foresaw a few exceptions that could occur with some frequency, one of which is the acknowledgment that rate-of-return carriers who incur new categories of investment during the freeze should calculate new factors for the investment and then freeze the new factors for the duration of the freeze.¹⁰ The Commission noted that it agreed 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.¹¹ It is clear that the Commission knew that there would be changes to reporting over time and tried to anticipate how to handle those, however, it seems apparent that the Commission did not

⁷ See *Petition* at 2.

⁸ See *Petition* at 3.

⁹ See Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from David Cosson, Counsel to Pioneer Telephone Cooperative, Inc. (Feb. 29, 2016) referring to, *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).

¹⁰ See *Separations Freeze Order* at para 53.

¹¹ See *Id.*, citing, *USTA Recommended Decision Comments* at 6.

anticipate that the freeze would go beyond its initial six years. Therefore, absent removing the freeze the FCC should clarify this matter now to alleviate confusion and provide a consistent methodology.

USTelecom urges the Commission to act promptly to clarify this matter for Endeavor and other affected companies. Carriers should not suffer ongoing revenue losses due to the lack of clarity in this instance. Providing clarification 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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