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
	)	
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	)	WC Docket No. 16-66

REPLY COMMENTS
OF
ENDEAVOR COMMUNICATIONS

Clay County Rural Telephone Cooperative d/b/a Endeavor Communications (Endeavor) hereby files these reply comments in response to comments filed on Endeavor's Petition for Clarification (Petition).[1] Endeavor seeks clarification from the Wireline Competition Bureau (Bureau) 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 separations freeze if that category is ordinarily directly assigned in accordance with the Part 36 rules. Two parties filed comments in response to Endeavor's Petition – the United States Telecom Association (USTelecom) and the National Exchange Carrier Association (NECA).

[1] Petition for Clarification of Endeavor Communications, CC Docket No. 80-286 (fil. Feb. 26, 2016)(Petition); *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*, CC Docket No. 80-286, WC Docket No. 16-66, Public Notice, DA 16-257 (rel. Mar. 8, 2016).
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USTelecom, which represents both price cap and rate-of-return incumbent local exchange carriers (ILECs), is supportive of Endeavor's requested clarification and urges the Commission to act promptly to clarify this matter for Endeavor and other affected companies.[2] It states that the requested clarification "would be consistent with the intent of the rule[s] [on the separations freeze], 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."[3] In addition, as USTelecom correctly points out, the sudden request by NECA for Endeavor to change a methodology of reporting which has accurately reported the company's investment over a period of years in and of itself makes it clear that clarification is needed.[4]

NECA, in its comments, contends that Endeavor's direct assignment of its digital subscriber line (DSL) investment costs is impermissible under the FCC's rules for rate-of-return carriers that elected to freeze their category relationships.[5] In support of its argument, NECA references section 36.1 of the rules, which describes a two-step separations process.[6] Section 36.1 states that step one is the assignment of plant costs to categories, and step two is "the apportionment of the cost of the plant in each category among the operations by direct assignment where possible..."[7] NECA's argument is that because direct assignment is

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[2] Comments of the United States Telecom Association, WC Docket No. 16-66, CC Docket No. 80-286 (fil. Apr. 7, 2016), p. 4 (USTelecom Comments).

[3] *Id.*

[4] *Id.*, p. 3.

[5] Comments of the National Exchange Carrier Association, Inc., CC Docket No. 80-286, pp. 3, 6 (NECA Comments).

[6] *Id.*, pp. 2, 6-7.

[7] 47 C.F.R. §36.1.

mentioned in the rule as taking place in the second step of the process, that carriers are prohibited from directly assigning costs to jurisdictionally pure service categories concurrent with their categorization of the plant in step one.[8]

Even though section 36.1 expressly identifies direct assignment only in the description of the second step of the separations process, there is nothing to suggest that it is precluded from occurring in step one, along with plant categorization. In fact, a complete reading of the Part 36 rules indicates that direct assignment is allowed to occur simultaneously with the categorization process. Section 36.2(a)(1) states that "Separations are intended to apportion costs among categories or jurisdictions by actual use or direct assignment."[9] Here, the FCC is indicating that categorization can be accomplished through direct assignment, and not just though actual use (using frozen factors for Endeavor). Similarly, section 36.153 pertains to assignment of cable and wire facilities to categories. In section 36.153(a), it states that "where an entire cable or aerial wire is assignable to one category, its cost and quantity are, where practicable, directly assigned."[10] This is an example of direct assignment to a category, before it is jurisdictionally separated or directly assigned to a jurisdiction.

Finally, Endeavor wishes to briefly address the potential impact of the *Rate-of-Return Reform Order*[11]on companies like Endeavor that froze their category relationships. In the *Rate-of-Return Reform Order*, the FCC required rate-of-return carriers to remove the costs for Consumer Broadband-Only loops from the special access category using an average cost per

[8] NECA Comments, pp. 6-7.

[9] 47 C.F.R. §36.2(a)(1).

[10] 47 C.F.R. §36.153(a).

[11] *Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90, WC Docket No. 14-58, CC Docket No. 01-92, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16-33 (rel. Mar. 30, 2016)(*Rate-of-Return Reform Order*).

loop for Common Line facilities with a 100 percent interstate allocation.[12] Presumably, the investment to be allocated from the special access category is specifically the investment that is used in the provision of Consumer Broadband-Only loops and not investment associated with other special access services. For Endeavor and other companies that have seen tremendous growth in special access services – including broadband – since the adoption of the separations category freeze, NECA's interpretation of the *2001 Separations Freeze Order* results in a relatively small allocation of investment to the special access category, and even less assigned to the provision of broadband services. NECA's interpretation results in the majority of the investment being assigned to Common Line and other voice services, as these were the predominant services offered prior to the separations category freeze. As a result, the special access investment is understated and the common line investment is overstated relative to the actual use of the network.

In a perverse turn of events, in the *Rate-of-Return Reform Order*, the overstated common line investment per loop is then used to derive the portion of the understated special access investment to be moved to the Consumer Broadband-Only category.[13] If NECA's interpretation of the *2001 Separations Freeze Order* is allowed to stand, a company with frozen category relationships, such as Endeavor, will not have assigned sufficient investment to the special access category to allow for the transfer from special access to the Consumer Broadband-Only category. This means any substantive adoption of Consumer Broadband-Only services by Endeavor's customers will result in a significant, or complete, transfer of investment from the special access category to the Consumer Broadband-Only category. The concept of Consumer

[12] *Id*, para. 191.

[13] *Id*.

Broadband-Only services was not even a consideration in 2001, and Endeavor believes the FCC did not intend for this to take place.

In conclusion, the Bureau should promptly 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 directly assigned under the Part 36 rules. This clarification is supported by the ILEC industry.[14] In addition, the requested clarification would be consistent with both the FCC's Part 36 rules and its orders concerning the separations freeze, and NECA has failed to conclusively demonstrate that it is not. Furthermore, disallowing Endeavor's direct assignment methodology would have a perverse and unintended outcome as a result of the reforms adopted in the *Rate-of-Return Reform Order*. Endeavor and other similarly situated carriers should not be forced to change a methodology for identifying and directly assigning their DSL costs that they have consistently employed since the inception of the separations freeze without any question until now.

Respectfully submitted,

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[14] *See generally*, USTelecom Comments.