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Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of 2001 JUN 29 P 5: 25)
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Jurisdictional Separations Reform and)
Referral to the Federal-State Joint Board)
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CC Docket No. 80-286 /

ORDER

Adopted: June 25, 2001

Released: June 26, 2001

By the Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, we grant a limited waiver of section 36.3(b) of our rules, in response to a Joint Petition filed by the National Exchange Carrier Association (NECA), the United States Telephone Association (USTA), the National Telephone Cooperative Association (NTCA), the National Rural Telecom Association (NRTA), and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPATSCO) (hereafter collectively referred to as "Joint Petitioners").¹ This waiver will allow rate-of-return carriers additional time to determine, in accordance with the Commission's May 22, 2001 *Report and Order* adopting a freeze of the Part 36 jurisdictional separations process, whether they desire to freeze their Part 36 category relationships in addition to their jurisdictional allocation factors.² Specifically, we extend the July 1, 2001 deadline for rate-of-return carriers to notify NECA or the Commission of their election to freeze category relationships to September 1, 2001.

II. BACKGROUND

2. On May 22, 2001, the Commission released a *Report and Order* that adopted a five-year interim "freeze" of the jurisdictional separations process codified at Part 36 of the Commission's rules, effective starting July 1, 2001.³ The Commission concluded that price cap

¹ National Exchange Carrier Association, United States Telecom Association, National Telephone Cooperative Association, National Rural Telecom Association, and Organization for the Promotion and Advancement of Small Telecommunications Companies, "Joint Petition for Expedited Limited Waiver," CC Docket No. 80-286, filed June 15, 2001 ("Joint Petition").

² *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, Report and Order, CC Docket No. 80-286, FCC 01-162 (rel. May 22, 2001) (*Report and Order*) at para. 30. See also *id.*, Errata, CC Docket No. 80-286 (rel. June 11, 2001) (*Errata*).

³ See *id.*

carriers shall be required to freeze both their jurisdictional allocation factors and their Part 36 category relationships using calendar year 2000 levels, but that due to their different investment patterns and operating structures, rate-of-return carriers would only be required to freeze their jurisdictional allocation factors.⁴ The Commission further concluded, however, that rate-of-return carriers shall have a one-time option to also freeze their category relationships if they determine that such an action is in their best interests based upon their individual investment patterns or plans.⁵ The Commission accordingly adopted a rule specifying that rate-of-return carriers that are members of the NECA tariff pool must notify NECA by July 1, 2001 if they elect to freeze their category relationships.⁶ Rate-of-return carriers that are not participating in the NECA pool must instead notify the Commission by July 1, 2001 if they elect to freeze their category relationships.⁷

3. On June 15, 2001, the Joint Petitioners filed a Joint Petition for Expedited Limited Waiver of the rule requiring rate-of-return carriers to notify NECA or the Commission of their election to freeze their category relationships, seeking an extension of the deadline to September 1, 2001.⁸ The Joint Petitioners request this expedited limited waiver because, in order to make an informed decision regarding whether to freeze their category relationships, rate-of-return carriers will need to analyze the category relationships from their calendar year 2000 separations study data compared with any anticipated budget and infrastructure changes, or any plans to deploy new technologies such as digital subscriber line (DSL).⁹ The Joint Petitioners assert that, given the release of the *Report and Order* on May 22, 2001, rate-of-return carriers would need additional time to process data through cost separation and budget models in order to determine whether to freeze their category relationships, and that due to the complexity of these studies and limited resources, most small cost companies would require outside accounting and consulting services.¹⁰ The Joint Petitioners assert that, without additional time, many rate-of-return carriers may forego the option to freeze their categories without knowing for sure whether they would benefit from such an election.¹¹ The Joint Petitioners state that an extension until September 1, 2001 will permit rate-of-return carriers sufficient time to make informed decisions about whether to elect to freeze category relationships.¹²

⁴ *Report and Order* at para. 21. See also *Report and Order* at n.30.

⁵ *Id.*

⁶ *Report and Order*, Appendix C, Final Rules, 47 C.F.R. § 36.3(b)(1). In the *Errata*, section 36.3(b)(1) was consolidated into section 36.3(b), so the proper citation for the rule at issue here is 47 C.F.R. §36.3(b).

⁷ *Id.*

⁸ Joint Petition at 1.

⁹ *Id.* at 2.

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 3.

¹² *Id.* at 3-4.

III. DISCUSSION

4. The Commission may waive any provision of its rules on its own motion and for good cause shown.¹³ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.¹⁴ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁵ In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁶

5. We conclude that the Joint Petitioners have demonstrated that strict adherence to the rule as adopted may cause hardship for rate-of-return carriers subject to Part 36, because they will not have sufficient time to make an informed decision as to whether freezing their category relationships will benefit them based on their individual investment patterns and projections, absent a waiver of section 36.3(b) of the Commission's rules. One of the primary goals of the separations freeze adopted in the *Report and Order* was to simplify the separations process for all carriers, and freezing category relationships greatly simplifies the separations process by freeing carriers from having to perform category-by-category cost studies. The Commission recognized, however, that rate-of-return carriers have investment structures that differ from price cap carriers, and therefore concluded that the freeze of category relationships should be optional for rate-of-return carriers. Because it is now apparent from the Joint Petition that the decision to freeze category relationships may be more complex than the Commission originally anticipated, we conclude that the public interest compels us to grant a limited waiver of section 36.3(b) of our rules to all rate-of-return carriers subject to Part 36. We agree with the Joint Petitioners that it would be contrary to the overall goals of the freeze if some rate-of-return carriers who may benefit from a categories freeze were forced to forego that opportunity due to insufficient time to assess the potential benefits of such an election.

6. We conclude, therefore, that all rate-of-return carriers subject to Part 36 shall have an additional two months, until September 1, 2001, to notify NECA or the Commission of their election to freeze their Part 36 category relationships. We agree with the Joint Petitioners that this should provide rate-of-return carriers with sufficient time to assess the benefit of a categories freeze and notify NECA or the Commission of their election, if they decide to adopt such a freeze. Finally, we agree with the Joint Petitioners that the change in the election date will have no effect on any other aspect of the separations freeze delineated in the *Report and Order*, as all of the other components of the freeze remain intact, and the effective date of the freeze, for both category relationships and allocation factors, remains July 1, 2001.¹⁷

¹³ Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, allows for waiver of Commission rules if special circumstances warrant deviation from the general rule and such deviation will serve the public interest. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), cert. denied, 409 U.S. 1027 (1972).

¹⁴ *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ *WAIT Radio*, 418 F.2d at 1157.

¹⁶ *Northeast Cellular*, 897 F.2d at 1166.

¹⁷ See Joint Petition at 3.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to sections 1-2, 4, 201-205, 215, 218, 220, 229, 254 and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 201-205, 215, 218, 220, 229, 254, and 410, and section 1.3 of the Commission's rules, 47 U.S.C. § 1.3, that the Joint Petition for Expedited Limited Waiver filed on June 15, 2001 by the National Exchange Carrier Association, the United States Telecommunications Association, the National Telephone Cooperative Association, the National Rural Telecom Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies IS GRANTED to the extent provided herein.

8. IT IS FURTHER ORDERED that the July 1, 2001 deadline for carriers not subject to price cap regulation pursuant to section 61.41 of the Commission's rules, 47 C.F.R. § 61.41, to notify the Commission or NECA of their election to freeze their Part 36 category relationships, set forth at 47 C.F.R. § 36.3(b), IS WAIVED for all carriers subject to section 36.3(b) of the Commission's rules.

9. IT IS FURTHER ORDERED that carriers not subject to price cap regulation pursuant to section 61.41 of the Commission's rules, 47 C.F.R. § 61.41, that participate in National Exchange Carrier Association (NECA) tariff pools shall notify NECA by September 1, 2001, of their election to be subject to section 36.3(b) of the Commission's rules, 47 C.F.R. § 36.3(b). Carriers not subject to price cap regulation pursuant to section 61.41 of the Commission's rules, 47 C.F.R. § 61.41, and that do not participate in NECA tariffs, shall notify the Commission by September 1, 2001, of their election to be subject to section 36.3(b) of the Commission's rules, 47 C.F.R. § 36.3(b).

FEDERAL COMMUNICATIONS COMMISSION



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