

**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
	)	

**OPPOSITION OF VERIZON<sup>1</sup> AND VERIZON WIRELESS**

The National Telecommunications Cooperative Association (“NTCA”) requests clarification or waiver of the Commission’s rules to allow rate-of-return ILECs to shift all of the costs associated with federal universal service program audits to the interstate jurisdiction.<sup>2</sup> There is no basis for NTCA’s request. The Commission should deny the NTCA Petition.

Under the Commission’s jurisdictional separations rules, part of the costs that rate-of-return carriers incur participating in Universal Service Fund (“USF”) audits conducted by the Universal Service Administrative Company (“USAC”) and the Commission Office of Inspector General (“OIG”) is recovered from interstate rates, and part is recovered from intrastate rates. These and all of the separations requirements in Part 36 of the Commission’s rules are increasingly meaningless as markets and regulators move away from traditional rate-of-return regulation in favor of consumer friendly incentive regulation such as price caps. Indeed, most consumers are already served by carriers that are not subject to the separations rules.<sup>3</sup>

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<sup>1</sup> In addition to Verizon Wireless, the Verizon companies participating in this filing (“Verizon”) are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

<sup>2</sup> *Petition for Expedited Clarification and/or Limited Waiver of the Commission’s Part 36 Rules*, National Telecommunications Cooperative Association, CC Docket No. 80-286 (Aug. 29, 2008) (“NTCA Petition”).

<sup>3</sup> Intermodal providers such as wireless carriers, cable companies, and VoIP providers have never been subject to the Commission’s separations rules. Last year, the Commission also

Antiquated rules such as the separations requirements should be phased out, for all providers, in today's competitive environment. It makes no sense for the Commission, as NTCA suggests, to invest resources on piecemeal modifications to the separations process when these rules are becoming wholly irrelevant.

In particular, NTCA proposes that the Commission modify the separations rules and directly assign all of the costs that rate-of-return carriers incur participating in USAC-OIG audits to the interstate jurisdiction for recovery through interstate rates. NTCA Petition at 1. NTCA suggests that this is appropriate because: (1) these audits are required by the Commission pursuant to federal universal service rules; and (2) NTCA members are concerned that their local regulators may disallow recovery of these costs through intrastate rates. NTCA Petition at 5-6. Both arguments lack merit.

NTCA claims "common sense" dictates that all federal USF audit costs incurred by rate-of-return carriers should be recovered from interstate rates. NTCA Petition at 5. Common sense dictates no such thing. The subsidies that flow from the USF are indeed federal dollars collected from consumers across the country, but the *use* of this support is not limited to interstate facilities. To the contrary, federal universal service funding subsidizes both interstate and

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relieved AT&T, Verizon, and Qwest – the largest incumbent LECs – from the cost allocation requirements of the separations rules because the companies are regulated under the Commission's price cap regime, and price caps are cost agnostic. *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008), *pet. for recon. pending*; *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's ARMIS Reporting Requirements*; *Petition of Verizon For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements, et al.*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 (2008), *pet. for recon. pending*. These recent forbearance orders are consistent with the Commission's concurrent tentative conclusion to extend the "separations freeze" for another year. *Jurisdictional Separations and Referral to the Federal-State Joint Board*, Notice of Proposed Rulemaking, CC Docket No. 80-286, FCC 09-24 (March 27, 2009).

*intrastate* services. For example, high cost support accounts for the majority of all universal service funding – more than \$4 billion of the approximately \$7 billion fund.<sup>4</sup> Of that \$4 billion, about \$2 billion is paid primarily to rate-of-return carriers such as NTCA member companies through the high cost loop and local switching support programs.<sup>5</sup> High cost loop support subsidizes the cost of *local* facilities, focusing on the “last mile” connection to customers served by rural carriers.<sup>6</sup> Many services, both interstate and intrastate, utilize local loop connections for physical transport. Likewise, the local switching program (as its name implies) subsidizes *local* facilities and is designed to support local switching costs in rural areas.<sup>7</sup>

It is eminently reasonable to apportion USF compliance costs, such as those associated with USAC-OIG audits, between the federal and state jurisdictions when universal service funding is used for facilities that support both interstate and intrastate services. If, as NTCA suggests, all of the administrative costs of participating in the USF program should be allocated to the interstate jurisdiction, then NTCA member companies should not seek federal universal service subsidies for the cost of intrastate or mixed use facilities.

In addition, NTCA’s allegation that the Commission alone is the “cost causer” with respect to USAC-OIG audits is inaccurate. NTCA Petition at 6. Universal service is designed as

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<sup>4</sup> USAC, Universal Service Fund Facts – High Cost Program Data, <http://www.usac.org/about/universal-service/fund-facts/fund-facts-high-cost-program-data.aspx>. Today, the vast majority of all USAC-OIG audits also focus on high cost fund receipts.

<sup>5</sup> USAC, High Cost Program – Disbursements by Component, <http://www.usac.org/about/universal-service/fund-facts-charts/hc-Disbursements-by-Component.pdf>.

<sup>6</sup> USAC, High Cost Loop Support, <http://www.usac.org/hc/incumbent-carriers/step01/hc-loop-support.aspx>.

<sup>7</sup> USAC, Local Switching Support, <http://www.usac.org/hc/incumbent-carriers/step01/local-switching-support.aspx>.

a collaborative federal-state program. State commissions are generally responsible for designating carriers eligible to receive federal universal service support, and the Commission is responsible for establishing the universal service distribution and contribution mechanisms. 47 U.S.C. §§ 214(e), 254(d) and (e). The Federal-State Joint Board on Universal Service, made up of both federal and state members, is also responsible for recommending universal service policy to the Commission. 47 U.S.C. § 254(a). And most important, states are responsible for certifying on an annual basis that universal service funds are used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” 47 U.S.C. §254(e); 47 CFR §§54.313 and 54.314.

Further, USAC has engaged in audits of USF support recipients since its creation in 1997. And throughout this period, the costs to rate-of-return carriers for compliance with USAC-OIG audit requirements have always been allocated pursuant to the Commission’s separations rules. While it is true that audit activity has increased as a result of Commission directives, NTCA has not presented any arguments which compel a change in the historical method of allocation and recovery of audit costs.

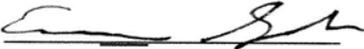
NTCA’s concern that “[s]tates may disallow” audit costs booked to the intrastate jurisdiction is also of no moment. NTCA does not identify any decision from any state to “disallow” costs associated with responding to USAC-OIG audits. Moreover, the Commission must consider the reality of what NTCA is asking: NTCA members would prefer to recover their audit costs from the interstate jurisdiction because those costs would then be substantially covered by interstate access rates paid by wireless providers and IXCs, and generally not by NTCA members’ end-users. There is no basis for such a shift. NTCA members receive the benefit of federal subsidies, and compliance with the universal service program rules is solely

within their control. All carriers, small and large, that receive USF support incur administrative costs on both the state and federal level in complying with program requirements. Allowing rate-of-return carriers to essentially pay all, or most, of their audit costs with interstate access revenues would provide a disincentive for these carriers to operate efficiently and would not result in better compliance with USF program rules.

**Conclusion**

For these reasons, the Commission should deny the NTCA Petition.

Respectfully submitted,

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