

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	CC Docket No. 80-286
Jurisdictional Separations and Referral	)	DA 10-608
to the Federal-State Joint Board	)	FCC 10-47



**REPLY COMMENTS**

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> responds to the April 19, 2010 Initial Comments filed in response to the April 8, 2010 Public Notice by the Federal Communications Commission (Commission or FCC) (Public Notice)<sup>2</sup> to the FCC's Notice of Proposed Rulemaking (NPRM)<sup>3</sup> on the separations freeze extension.

NTCA and most commenters agree that the Commission should extend the separations freeze at least one year past USF and ICC Reform, and several follow NTCA in urging the Commission to allow rate-of-return (ROR) carriers to unfreeze their category relationship. The Commission's freeze order should reflect the new local switching support (LSS) rules and should allow ROR carriers to allocate their federal Universal Service Fund (USF) audit expenses under

<sup>1</sup> NTCA is a premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents 580 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service rural local exchange carriers (LECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

<sup>2</sup> *Comment Cycle Established for Notice of Proposed Rulemaking Regarding Separations Freeze Extension*, CC Docket No. 80-286, DA 10-608 (rel. Apr. 8, 2010) (Public Notice).

<sup>3</sup> *Federal-State Joint Board on Jurisdictional Separations*, CC Docket No. 80-286, Notice of Proposed Rulemaking, FCC 10-47 (rel. Mar. 29, 2010) (NPRM).

Part 36 to the interstate jurisdiction.

**I. EXTEND THE FREEZE FOR AT LEAST ONE YEAR BEYOND USE AND ICC REFORM AND ALLOW A ONE-TIME UNFREEZE OF CATEGORY RELATIONSHIPS.**

In the NPRM, the Commission sought comment on extending the current Part 36 category relationships and jurisdictional cost allocation factors until June 30, 2011.<sup>4</sup> Most commenters join NTCA, the National Exchange Carrier Association (NECA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), the Eastern Rural Telecom Association (ERTA) and the Western Telecommunications Alliance (WTA) (the Associations) in agreeing that at least a one-year extension was necessary.<sup>5</sup> Commenters including the Associations, CenturyLink, Gila River Telecommunications, and Qwest, the Texas Statewide Telephone Cooperative, also urge the Commission to extend the freeze at least one year following reform of the Universal Service Fund and the intercarrier compensation system.<sup>6</sup> Many of these commenters observed that small companies would experience hardships from the administrative expenses if the jurisdictional separations freeze were not extended.<sup>7</sup> Only one commenter opposed the freeze, contending that the State Members' Interim Proposal, also pending in this docket, should be adopted instead.<sup>8</sup> The Texas Coop correctly observed that "the high-cost USF rules, ICC rules, and jurisdictional separations reform are inextricably related," so the freeze should last at least one year beyond USF and ICC

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<sup>4</sup> *Id.* at ¶ 1.

<sup>5</sup> National Exchange Carrier Association, National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, Eastern Rural Telecom Association, and Western Telecommunications Alliance (Associations) Joint Comments, pp. 1-2; CenturyLink Comments, p. 1; GNVW Comments, p. 2; Independent Telephone & Telecommunications Alliance (ITTA) Comments, p. 1; Texas Statewide Telephone Cooperative, Inc. (Texas Coop), Comments, p. 2; Gila River Telecommunications (Gila River) Comments, p. 5; Coalition for Equity in Switching Support (Coalition) Comments, p.1; Cincinnati Bell Telephone Company LLC (Cincinnati Bell) Comments, p. 1; CenturyLink Comments, pp. 1, 2; U.S. Telecom Association (USTA) Comments, p. 1; National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel (NASUCA et al.) Joint Comments, p. 3.

<sup>6</sup> CenturyLink Comments, p. 1; ITTA Comments, pp. 1-2; Qwest Comments, p. 2; Texas Coop Comments, pp. 2-3.

<sup>7</sup> *See, e.g.*, Texas Coop Comments, p. 2.

<sup>8</sup> Virginia State Corporation Commission Comments, p. 2.

reform.

Several commenters agreed with the Associations that the freeze order should also permit ROR carriers to unfreeze their 2001 category relationships pending separations reform.<sup>9</sup> The Associations report that 46 ROR carriers have frozen their category relationships and, as Gila River observed, such a ROR carrier does not receive adequate cost recovery for infrastructure investments made since their categories were frozen.<sup>10</sup> These remaining ROR ILECs should be allowed to revisit their category selections, which were expected to last until 2006. At least two more years will pass before the Commission anticipates completion of USF and intercarrier compensation (ICC) reform rulemaking proceedings. The affected ILECs have waited since 2006 for USF and ICC reform to occur so the separations process can be revised. More delay is inevitable as the Commission implements the NBP. Unfortunately, this delay will increase the hardships faced by those rural ILECs who are not receiving their appropriate USF cost recovery for their network upgrades and reconfigurations. The Commission should allow the ROR ILECs now a one-time opportunity to change their category relationships so cost recovery can occur.

## **II. THE FREEZE ORDER SHOULD INCORPORATE THE NEW LOCAL SWITCHING SUPPORT RULES.**

The Commission should also heed the Coalition for Equity in Switching Support's (Coalition) advice to ensure the new rules governing local switching support (LSS) for small incumbent local exchange carriers (ILECs) are reflected in the Commission's freeze order.<sup>11</sup> As the Coalition correctly noted, the Commission recently revised its LSS regulations for small ILECs to address an inequity in the allocation of LSS support.<sup>12</sup> NTCA agrees with the

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<sup>9</sup> Associations Joint Comments, p. 5; Alexicon Comments, p. 3; Gila River Comments, p. 1; GVNW Comments, p. 3; Texas Coop Comments, p. 3.

<sup>10</sup> Associations Joint Comments, p. 6; Gila River Comments, p. 3.

<sup>11</sup> Coalition Comments, p. 3.

<sup>12</sup> Coalition Comments, p. 3. See *In the Matter of High-Cost Universal Service Support, Jurisdictional Separations*, CC Docket No. 80-286, Report and Order and Memorandum Opinion and Order, FCC 10-44 (rel. Mar. 18, 2010).

Coalition that to ensure clarity, the Commission should incorporate the LSS rules into the freeze order.

**III. WAIVING PART 36 SEPARATIONS RULES TO ALLOW ROR CARRIERS TO ALLOCATE USAC AUDIT EXPENSES TO THE INTERSTATE JURISDICTION SHOULD ALSO BE CONTAINED IN THE FREEZE ORDER.**

Jurisdictional separations is more significant to ROR carriers than to price-cap carriers, as CenturyLink aptly notes.<sup>13</sup> Consequently, the Commission should weigh more heavily the impacts of separations on ROR carriers than price-cap in making its decision on the separations freeze and other separations issues. One related separations issue is how ROR carriers must allocate under Part 36 rules their audit expenses which arise from USF audits by the Commission's Office of Inspector General and the Universal Service Administrative Company (USAC). This issue is raised in NTCA's 2008 USAC Audit Expense Petition.<sup>14</sup>

As part of the Commission's separations freeze order, or concurrent with its adoption, the Commission should grant NTCA's Petition. The Petition seeks a clarification and/or limited waiver of Part 36 jurisdictional separations rules as they affect rate-of-return (ROR) carriers' recovery of federal Universal Service Fund (USF). The Petition asserts that federal USF audit expenses are solely interstate in nature and asks the Commission to permit all ROR carriers to directly assign and allocate all federal USF audit expenses to the interstate jurisdiction, instead of being split using the Big Three Expense allocator under 47 C.F.R. §36.392. This split allocation assigns a portion of the federal USF audit expenses to the intrastate jurisdiction, rendering recovery of that portion impracticable or impossible. On average, ROR carriers are not able to

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<sup>13</sup> CenturyLink Comments, p. 2.

<sup>14</sup> *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board, Petition of National Telecommunications Cooperative Association for Expedited Clarification and/or Limited Waiver of the Commission's Part 36 Rules*, CC Docket No. 80-286 (filed Aug. 29, 2008) (NTCA Petition).

recover the intrastate portion, which is about \$17,000 per audit.<sup>15</sup>

Nearly all commenters in that proceeding, including the State Members of the Federal-State Joint Board on Jurisdictional Separations, supported the Petition.<sup>16</sup> The State Members, in their May 5, 2009 reply comments, agreed with NTCA that the federal USF audit costs should be directly assigned to the interstate jurisdiction. Federal USF audit expenses are solely interstate in nature; consequently, it is appropriate that those expenses be allocated to the interstate jurisdiction.

This docket has been fully briefed and is ready for decision. As Alexicon correctly stated in its separations freeze comments, “small ILECs may be deprived of recovery of costs they expended related to activities caused by regulatory oversight in the interstate jurisdiction” if the NTCA Petition is not granted.<sup>17</sup> The freeze order should allow all ROR carriers under Part 36 separations rules to directly allocate and assign to the interstate jurisdiction their USAC audit expenses, as requested in NTCA’s 2008 USAC audit Petition.

#### **IV. CONCLUSION**

For these reasons, the Commission should extend the separations freeze at least one year past USF and ICC Reform, and the Commission should allow ROR carriers to unfreeze their

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<sup>15</sup> NTCA Reply Comments, NTCA Petition, CC Docket No. 80-286, DA 09-623 (filed May 5, 2009), p. 3.

<sup>16</sup> *Id.* at 1-2. The lone dissenter was Verizon, which advocated elimination of separations reform entirely. *Id.* at 10.

<sup>17</sup> Alexicon Comments, p. 3.

category relationships. The Commission's freeze order should reflect the new LSS rules and should allow ROR carriers to allocate their USAC audit expenses under Part 36 to the interstate jurisdiction.

Respectfully submitted,



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April 26, 2010

**CERTIFICATE OF SERVICE**

I, Adrienne L. Rolls, certify that a copy of the foregoing Reply Comments of the National Telecommunications Cooperative Association in CC Docket No. 80-286, DA 10-608 & FCC 10-47, was served on this 26<sup>th</sup> day of April 2010 by first-class, United States mail, postage prepaid, or via electronic mail to the following persons:

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