

**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
	)	
Petition by Eastex Telephone Cooperative, Inc.	)	
For Waiver of 47 C.F.R. Sections 36.3, 36.3, 36.123-126,	)	
36.141, 36.152-157, 36.191 and 36.372-382	)	
To Unfreeze Part 36 Category Relationships	)	

**COMMENT SOUGHT ON A PETITION FILED BY EASTEX, TELEPHONE  
COOPERATIVE, INC. FOR WAIVER CONCERNING THE COMMISSION'S PART 36  
JURISDICTIONAL SEPARATIONS RULES**

**COMMENTS OF MOSS ADAMS LLP**

## **I. INTRODUCTION**

On February 8, 2012 the FCC released a Public Notice DA 12-168 titled “Comment sought on Petition filed by Eastex Telephone Cooperative, Inc. for Waiver Concerning the Commission’s Part 36 Jurisdictional Separations Rules in CC Docket No. 80-286.” In its Petition, Eastex Telephone Cooperative, Inc. (Eastex) asks for a waiver of Part 36 rules to unfreeze Part 36 category relationships that were frozen in 2001 when Eastex elected the option to freeze categories for five years. Moss Adams supports the Eastex Waiver Request and recommends that the Commission should not only grant the Eastex request, but should also extend the same option to all ILEC’s that chose to freeze category relationships in 2001.

Moss Adams believes Eastex has provided adequate justification for their waiver request and offers the following comments for consideration:

1. Assuming Eastex uses depreciable lives in the ranges as prescribed by the Commission, the Central Office Equipment (COE) of Eastex that was in service in 2001, over 11 years ago, is most likely fully depreciated. Frozen COE category relationships would reflect the fully depreciated plant, but may not be representative of new plant placed in service since 2001. Moss Adams therefore recommends that the Commission allow Eastex to adjust the frozen category relationships of COE investment based on its current use.

Cable and Wire Facilities (CWF) commonly have a depreciable life of 20 years or more. It is likely that Eastex has over 50% of the CWF that were in service in 2001 depreciated to the point that the frozen category relationships from 2001 may not be representative of its current use. In their Petition, Eastex states that they have 377 miles of fiber optic cable. Chances are that the majority of the fiber optic cable has been placed into service since 2001 and Moss Adams therefore recommends that the Commission allow Eastex to adjust the categorization of CWF investment based on its current use.

2. Moss Adams agrees with Eastex's suggestion that the Commission should consider adoption of the Federal-State Joint Boards' proposal, Part 1 of which addressed the "cost – revenue mismatch" for carriers that have frozen category relationships.
  
3. As required by Part 32 and Part 36 rules, Moss Adams believes that Eastex has demonstrated that they are keeping appropriate basic property records that contain the plant categorization based on the equipment's current use and applicable categories. Moss Adams believes ILECs that chose to freeze categories in 2001 will have maintained categorization records that are current and would be able to provide the Commission with impact schedules similar to the calculations in Eastex's Attachments 2 and 3.

4. Moss Adams believes that the cost shifts experienced by Eastex are reflective of the changes in service and network deployments that have occurred since 2001 for many rural ILECs. Both special access and DSL services, and the associated costs identified through categorization, have grown significantly since 2001 when the category relationships were originally frozen. As experienced by Eastex, many other rural carriers have also seen a large growth in DSL and special access services, especially in wideband circuits serving cell towers and end user adoption of broadband internet access.
5. Eastex explained in their petition that the Commission's granting of the waiver request would not impact the High Cost Fund. In the petition, Eastex states that the Cooperative would receive \$584,005 less in High Cost Loop Support. It is in the public interest to allow that amount of HCLS USF to be redistributed to other HCLS pool members who receive HCLS funding under the Rate of Return Pool Cap.

## **II. CONCLUSION**

For the reasons stated above, Moss Adams supports Eastex in their petition for a waiver of the frozen category relationships originally established in 2001, over 11 years ago. Moss Adams believes it would be in the public interest to extend this waiver option, to unfreeze category relationships, to all Rate of Return ILECs who chose to freeze categories in 2001 under the understanding that it was "for a five year period." Moss Adams believes the use of ILEC networks has changed substantially in the past 11 years and it is appropriate to allow Eastex and other similarly situated carriers an opportunity to unfreeze their categories and allocate costs based on annual network utilization.

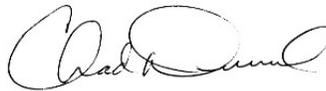
If the Commission chooses not to lift the category freeze for Eastex and similarly situated rural ILECs, Moss Adams would encourage the Commission to allow these companies to compute a one time adjustment to the category relationships based on current network utilization to more appropriately align costs to revenue recovery, as suggested by the Federal-State Joint Board in their proposal for interim adjustment. The Joint Board recommendation was referenced by Eastex in Footnote 21.

March 7, 2012

Respectfully Submitted,



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