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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
	)	

FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: March 14, 2012 **Released: March 15, 2012**

Comment Date: (14 days after date of publication in the Federal Register)
Reply Comment Date: (21 days after date of publication in the Federal Register)

By the Commission:

I. INTRODUCTION

1. In this Further Notice of Proposed Rulemaking, we seek comment on extending for two years, until June 30, 2014, the current freeze of jurisdictional separations category relationships and cost allocation factors in Part 36 of our rules.[1]

II. BACKGROUND

A. Jurisdictional Separations and the Separations Process

2. Jurisdictional separations is the process by which incumbent local exchange carriers (LECs) apportion regulated costs between the intrastate and interstate jurisdictions.[2] Historically, one of the primary purposes of the separations process has been to prevent incumbent LECs from recovering the same costs in both the interstate and intrastate jurisdictions.[3]

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[1] *See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 26 FCC Rcd 7133 (2011) (*2011 Separations Freeze Extension Order*) (extending for one year the initial separations freeze, which was scheduled to expire June 30, 2011); 47 C.F.R. §§ 36.1–507.

[2] In April 2008, the Commission conditionally granted AT&T's and BellSouth's petitions for forbearance from the Part 36 jurisdictional separations rules. *See Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules; Petition of BellSouth Telecommunications, Inc. for Forbearance Under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket Nos. 07-21, 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302, 7307, para. 12 (2008), *pet. for recon. pending, pet. for review pending, NASUCA v. FCC*, Case No. 08-1226 (D.C. Cir., filed June 23, 2008). In September 2008, the Commission extended the same relief to Verizon and Qwest. *See Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c); Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*, WC Docket Nos. 07-204, 07-273, Memorandum Opinion and Order, 23 FCC Rcd 13647, 13660, para. 23 (2008). The grants were expressly conditioned on, among other things, Wireline Competition Bureau (Bureau) approval of compliance plans to be filed by AT&T, Verizon, and Qwest, which were approved, effective immediately, on December 31, 2008. *See Wireline Competition Bureau Approves Compliance Plans*, WC Docket Nos. 07-21, 07-204, 07-273, Public Notice, 23 FCC Rcd 18417 (Wireline Comp. Bur. 2008).

[3] As the Supreme Court has recognized, procedures for the separation of intrastate and interstate property and expenses have been necessary for the appropriate recognition of authority between the interstate and intrastate jurisdictions. *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 148 (1930) (*Smith v. Illinois*); *see also MCI*

(continued . . .)

3. Incumbent LECs first separate costs into regulated and unregulated categories.[4] Incumbent LECs then perform jurisdictional separations by apportioning the regulated costs in each category between the intrastate and interstate jurisdictions in accordance with the Commission's Part 36 separations rules.[5] After the costs are jurisdictionally separated, incumbent LECs apportion the interstate regulated costs among the interexchange services and rate elements that form the cost basis for the incumbent LECs' interstate access tariffs.[6] Incumbent LECs perform this interstate costs apportionment in accordance with Part 69 of the Commission's rules.[7] The costs allocated to the intrastate jurisdiction form the foundation for determining incumbent LECs' intrastate rate base, expenses, and taxes.

4. The jurisdictional separations process has two parts. First, incumbent LECs assign regulated costs to various categories of plant and expenses. In certain instances, costs are further disaggregated among service categories.[8] Second, the costs in each category are apportioned between the intrastate and interstate jurisdictions. These jurisdictional apportionments of categorized costs are based upon either a relative use factor, a fixed allocator, or, when specifically allowed in the Part 36 rules, by direct assignment.[9] For example, loop costs are allocated by a fixed allocator, which allocates 25 percent of the loop costs to the interstate jurisdiction and 75 percent of the costs to the intrastate jurisdiction.[10]

5. The Commission undertakes rulemakings regarding jurisdictional separations in consultation with the Federal-State Joint Board on Jurisdictional Separations (Joint Board).[11] In 1997, the Commission initiated a proceeding seeking comment on the extent to which legislative, technological, and market changes warranted comprehensive reform of the separations process.[12] The Commission also

(Continued from previous page)
Telecommunications Corp. v. FCC, 750 F.2d 135, 137 (D.C. Cir. 1984) (stating that "'[j]urisdictional separation' is a procedure that determines what proportion of jointly used plant should be allocated to the interstate and intrastate jurisdictions for ratemaking purposes").

[4] 47 C.F.R. §§ 64.901–904. Non-regulated activities generally consist of activities that have never been subject to regulation under Title II of the Communications Act of 1934, as amended; activities formerly subject to Title II regulation that the Commission has preemptively deregulated; and activities formerly subject to Title II regulation that have been deregulated at the interstate level, but not preemptively deregulated at the intrastate level, which the Commission decides should be classified as non-regulated activities for Title II accounting purposes. *See* 47 C.F.R. § 32.23(a); *Accounting Safeguards under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539, 17573 (1996) (subsequent history omitted).

[5] 47 C.F.R. Part 36.

[6] Part 61 of the Commission's rules prescribes the procedures for filing and updating interstate tariffs. *See* 47 C.F.R. Part 61.

[7] 47 C.F.R. Part 69.

[8] For example, central office equipment (COE) Category 1 is Operator Systems Equipment, Account 2220. The Operator Systems Equipment account is further disaggregated or classified according to the following arrangements: (i) separate toll boards; (ii) separate local manual boards; (iii) combined local manual boards; (iv) combined toll and DSA boards; (v) separate DSA and DSB boards; (vi) service observing boards; (vii) auxiliary service boards; and (viii) traffic service positions. *See* 47 C.F.R. § 36.123.

[9] Because some costs are directly assigned to a jurisdictionally pure service category, *i.e.*, a category used exclusively for either intrastate or interstate communications, both steps are often effectively performed simultaneously. For example, the cost of private line service that is wholly intrastate in nature is assigned directly to the intrastate jurisdiction. *See* 47 C.F.R. § 36.154(a).

[10] *See* 47 C.F.R. § 36.154(c).

[11] 47 U.S.C. § 410(c); *see also Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking and Order Establishing a Joint Board, 78 FCC 2d 837 (1980).

[12] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22126, para. 9 (1997) (*1997 Separations Notice*).

invited the State Members of the Joint Board to develop a report that would identify additional issues that should be addressed by the Commission in its comprehensive separations reform effort.[13] The State Members filed a report setting forth additional issues that they believe should be addressed by the Joint Board and proposing an interim freeze, among other things, to reduce the impact of changes in telephone usage patterns and resulting cost shifts from year to year.[14] The Commission noted that the current network infrastructure is vastly different from the network and services used to define the cost categories appearing in the Commission's Part 36 rules.[15]

B. Jurisdictional Separations Freeze

6. On July 21, 2000, the Joint Board issued its *2000 Separations Recommended Decision*, recommending that, until comprehensive reform can be achieved, the Commission (i) freeze Part 36 category relationships and jurisdictional allocation factors for incumbent LECs subject to price cap regulation (price cap carriers) and (ii) freeze allocation factors only for incumbent LECs subject to rate-of-return regulation (rate-of-return carriers).[16] In the *2001 Separations Freeze Order*, the Commission generally adopted the Joint Board's recommendation.[17] The Commission concluded that the freeze would provide stability and regulatory certainty for incumbent LECs by minimizing any impacts on separations results that might occur due to circumstances not contemplated by the Commission's Part 36 rules, such as growth in local competition and new technologies.[18] Further, the Commission found that a freeze of the separations process would reduce regulatory burdens on incumbent LECs during the transition from a regulated monopoly to a deregulated, competitive environment in the local telecommunications marketplace.[19] Under the freeze, price cap carriers calculate: (1) the relationships between categories of

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[13] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382, 11386, para. 5 (2001) (*2001 Separations Freeze Order*).

[14] *Id.* at 11386, para. 6.

[15] *1997 Separations Notice*, 12 FCC Rcd at 22126–31, paras. 9–19.

[16] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Recommended Decision, 15 FCC Rcd 13160 (Fed-State Jt. Bd. 2000) (*2000 Separations Recommended Decision*). The Commission sought public comment on the *2000 Separations Recommended Decision*. *See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Public Notice, 15 FCC Rcd 15054 (Common Carr. Bur. 2000) (*2000 Separations Public Notice*). Part 32 contains the Uniform System of Accounts for Telecommunications Companies. It specifies the accounts that incumbent LECs must use to record their costs. *See* 47 C.F.R. Part 32. "Category relationships" are the percentage relationships of each Part 36 category to the total amount recorded in its corresponding Part 32 account(s). *See* 47 C.F.R. Parts 32, 36. "Jurisdictional allocation factors" are the percentage relationships that allocate costs assigned to Part 32 accounts for jointly used plant between the interstate (federal) and intrastate (state) jurisdictions. *See 2000 Separations Recommended Decision*, 15 FCC Rcd at 13172, para. 20.

[17] *2001 Separations Freeze Order*, 16 FCC Rcd at 11387–88, para. 9.

[18] *Id.* at 11389–90, para. 12. Jurisdictional cost shifts in separations results generally are caused by changes in any of three areas: overall cost levels, categorization of costs (*i.e.*, relative category assignments), or jurisdictional allocation factors. A carrier's increased overall cost level in a Part 32 account that has a high cost allocation to the interstate jurisdiction will cause shifts to the interstate jurisdiction for other investment and expense accounts whose jurisdictional allocations are dependent on that account. Increasing investment in specific categories (*e.g.*, interexchange cable and wire facilities) may also contribute to jurisdictional shifts in the final results. Likewise, changes in customer calling patterns (*e.g.*, increased interstate calling) will cause shifts in the jurisdictional allocation factors, many of which are based on usage. These factors allocate a significant portion of a carrier's investment between the interstate and intrastate jurisdictions.

[19] Although incumbent LECs were required under the Part 36 rules to perform separations studies, competitive carriers had no similar requirements. The Commission found that a freeze would further the Commission's goal of achieving greater competitive neutrality during the transition to a competitive marketplace by simplifying the separations process for those carriers subject to Part 36. *Id.* at 11390, para. 13.

investment and expenses within Part 32 accounts; and (2) the jurisdictional allocation factors, as of a specific point in time, and then lock or "freeze" those category relationships and allocation factors in place for a set period of time. The carriers use the "frozen" category relationships and allocation factors for their calculations of separations results and therefore are not required to conduct separations studies for the duration of the freeze. Rate-of-return carriers are only required to freeze their allocation factors, but were given the option of also freezing their category relationships at the outset of the freeze.[20]

7. The Commission ordered that the freeze would be in effect for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first.[21] In addition, the Commission stated that, prior to the expiration of the separations freeze, the Commission would, in consultation with the Joint Board, determine whether the freeze period should be extended.[22] The Commission further stated that any decision to extend the freeze beyond the five-year period in the *2001 Separations Freeze Order* would be based "upon whether, and to what extent, comprehensive reform of separations has been undertaken by that time."[23]

8. On May 16, 2006, in the *2006 Separations Freeze Extension and Further Notice*, the Commission extended the freeze for three years or until comprehensive reform could be completed, whichever came first.[24] The Commission concluded that extending the freeze would provide stability to incumbent LECs that must comply with the Commission's jurisdictional separations rules pending further Commission action to reform the Part 36 rules, and that more time was needed to study comprehensive reform.[25] The freeze was subsequently extended by one year in 2009,[26] 2010,[27] and 2011.[28]

C. Referral to the Joint Board

9. When it extended the freeze in 2009, the Commission referred a number of issues to the Joint Board and asked the Joint Board to prepare a recommended decision.[29] The Commission stated that it was "committed to working with the Joint Board to develop an efficient system for the jurisdictional separation of regulated costs in light of the dynamic nature of the telecommunications market place and the dramatic changes to the telecommunications industry since the separations freeze was first adopted in 2001." The Commission asked the Joint Board to consider comprehensive jurisdictional separations reform, as well as an interim adjustment of the current jurisdictional separations freeze, and whether, how, and when the Commission's jurisdictional separations rules should be modified.[30]

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[20] *Id.* at 11388–89, para. 11.

[21] *See id.* at 11387–88, para. 9.

[22] *See id.* at 11397, para. 29.

[23] *Id.*

[24] *See Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516, 5523, para. 16 (2006) (*2006 Separations Freeze Extension and Further Notice*).

[25] *Id.*

[26] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 24 FCC Rcd 6162 (2009) (*2009 Separations Freeze Extension Order*).

[27] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 25 FCC Rcd 6046 (2010) (*2010 Separations Freeze Extension Order*).

[28] *2011 Separations Freeze Order.*

[29] *2009 Separations Freeze Extension Order*, 24 FCC Rcd 6167–69, paras. 15–20.

[30] *Id.* at 6167, para. 15.

10. The Joint Board has been reviewing issues related to interim and comprehensive reform of the jurisdictional separations process. On March 30, 2010, the State Members of the Joint Board released a proposal for interim and comprehensive separations reform.[31] The Joint Board sought comment on the proposal. On September 24, 2010, the Joint Board held a roundtable meeting with consumer groups, industry representatives, and state regulators to discuss interim and comprehensive jurisdictional separations reform.[32] The Joint Board staff conducted an extensive analysis of various approaches to separations reform, and the Joint Board is evaluating that analysis.

11. In addition, while the Joint Board has been considering interim and comprehensive reform, the Commission comprehensively reformed the universal service and intercarrier compensation systems[33] and proposed additional rule changes regarding Connect America Fund support for rate-of-return carriers,[34] interstate rate of return represcription,[35] continuing reform of intercarrier compensation,[36] reform of end-user charges and CAF ICC support,[37] and IP to IP interconnection issues,[38] among other things.[39] The Joint Board is now considering the impact of those reforms on its analysis of the various approaches to separations reform it has under consideration.

III. DISCUSSION

12. We believe that the Commission's fundamental reform of the universal support and intercarrier compensation systems in the *USF/ICC Transformation Order* and the ongoing reform we proposed in the *Further Notice* significantly affect the Joint Board's analysis of interim and comprehensive separations reform. We therefore propose extending the freeze for two years, until June 30, 2014, to allow the Joint Board to consider these recent and proposed reforms before it issues a Recommended Decision. We seek comment on that proposal. In particular, would two years be sufficient for the Joint Board to complete its recommendations and, in turn, for the Commission to implement separations reform?

13. The Commission has observed that, if the frozen separations rules were to take effect again, incumbent LECs would be required to reinstitute their separations processes that have not been

[31] *Federal-State Joint Board on Separations Seeks Comment on Proposal for Interim Adjustments to Jurisdictional Separations Allocation Factors and Category Relationships Pending Comprehensive Reform and Seeks Comment on Comprehensive Reform*, CC Docket No. 80-286, Public Notice, 25 FCC Rcd 3336 (Fed.-State Jt. Bd. 2010).

[32] *Federal-State Joint Board on Jurisdictional Separations Announces September 24, 2010 Meeting and Roundtable Discussion of Jurisdictional Separations Reform*, CC Docket No. 80-286, Public Notice, 25 FCC Rcd 13245 (2010).

[33] *See In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform -- Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, paras. 734, 973-974 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*).

[34] *Id.* at para. 1031.

[35] *Id.* at para. 1045.

[36] *Id.* at para. 1297.

[37] *Id.* at para. 1326.

[38] *USF/ICC Transformation Order* at para. 1335.

[39] *Id.* at paras. 1028 – 1403.

used since the inception of the freeze over ten years ago.[40] We seek comment on whether incumbent LECs would have adequate time to reinstitute their separations processes prior to the expiration of the freeze on June 30, 2012, and whether such reinstitution would constitute an undue burden. We seek comment on the effect our proposal to extend the freeze will have on small entities, and whether any rules that we adopt should apply differently to small entities. We seek comment on the costs and burdens of an extension on small incumbent LECs and whether the extension would disproportionately affect specific types of carriers or ratepayers.

14. We anticipate that extending the jurisdictional separations freeze for two years provides incumbent LECs a reasonable method to apportion costs, and is preferable to allowing the previous separations requirements to resume.[41] We seek comment on that matter. We propose that the freeze extension be implemented as described in the *2001 Separations Freeze Order*.[42] Specifically, price cap carriers will use the same relationships between categories of investment and expenses within Part 32 accounts and the same jurisdictional allocation factors that have been in place since the inception of the current freeze on July 1, 2001. Rate-of-return carriers will use the same frozen jurisdictional allocation factors, and will use the same frozen category relationships if they had opted previously to freeze those. We seek comment on these proposals.

IV. PROCEDURAL MATTERS

15. *Comment Filing Procedures*. Interested parties may file comments and reply comments regarding this Further Notice on or before the dates indicated on the first page of this document.[43] **All filings related to this Further Notice should refer to CC Docket No. 80-286.** In responding to this Further Notice, we also invite parties to refresh the record on previously issued Notices of Proposed Rulemaking regarding the universal service contribution methodology.[44] Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[45]

- § Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.
- § Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or

[40] *See 2006 Separations Freeze Extension and Further Notice*, 21 FCC Rcd at 5525, para. 23; *2009 Separations Freeze Extension Order*, 24 FCC Rcd at 6165–66, para. 12.

[41] *See, e.g., 2009 Freeze Extension NPRM*, 24 FCC Rcd at 4234, para. 18.

[42] *2001 Separations Freeze Order*, 16 FCC Rcd at 11393–408, paras. 18–55 (describing the components of the freeze in detail).

[43] *See* 47 C.F.R. §§ 1.415, 1.419.

[44] *See, e.g., ISP-Bound Traffic Order*, 24 FCC Rcd 6475; *2006 Interim Contribution Methodology Order*, 21 FCC Rcd 7518; *2002 Interim Contribution Methodology Order*, 17 FCC Rcd 24952; *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 02-33, 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002); *Contribution Methodology Further Notice*, 17 FCC Rcd 3752; *Contribution Methodology Notice*, 16 FCC Rcd 9892.

[45] *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, D.C. 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8:00 a.m. to 7:00 p.m. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington D.C. 20554.

16. In addition, parties must send one copy of each pleading to: (1) the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, www.bcpiweb.com; phone: (202) 488-5300; fax: (202) 488-5563; (2) Daniel Ball, Wireline Competition Bureau, daniel.ball@fcc.gov.

17. Documents in CC Docket No. 80-286 will be available for public inspection and copying via ECFS (http://fjallfoss.fcc.gov/ecfs2/) and during business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 488-5563, or via e-mail www.bcpiweb.com.

18. *Accessible Formats.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

19. *Ex Parte Presentations.* This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.[46] Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented generally is required.[47] Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.[48]

20. *Paperwork Reduction Act.* This Further Notice does not propose any information collections subject to the Paperwork Reduction Act of 1995 (PRA).[49] This Further Notice, therefore, does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002.[50]

21. *Initial Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended,[51] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this Further Notice of Proposed Rulemaking, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. The IRFA is in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking. The Commission will send a copy of the Further Notice

[46] 47 C.F.R. §§ 1.1200 *et seq.*

[47] *See* 47 C.F.R. § 1.1206(b)(2).

[48] 47 C.F.R. § 1.1206(b).

[49] P. Law No. 104-13.

[50] P. Law No. 107-198; *see* 47 U.S.C. § 3506(c)(4).

[51] 5 U.S.C. § 603.

of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the SBA.[52] In addition, the Further Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the Federal Register.[53]

22. For further information regarding this proceeding, contact Daniel Ball, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1577, or daniel.ball@fcc.gov.

V. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 201–205, 215, 218, 220, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201–205, 215, 218, 220, 410, this Further Notice of Proposed Rulemaking IS ADOPTED.

24. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

25. IT IS FURTHER ORDERED, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 C.F.R. §§ 1.4(b)(1), 1.103(a), that this Further Notice of Proposed Rulemaking SHALL BE EFFECTIVE on the date of publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

[52] *See* 5 U.S.C. § 603(a).

[53] *Id.*

APPENDIX A

Proposed Rules

The only substantive change in the attached proposed rules from the existing Part 36 rules is the end date of the separations freeze, which has changed to June 30, 2014.

PART 36 - JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 36 continues to read as follows:

AUTHORITY: 47 U.S.C. Secs. 151, 154(i) and (j), 205, 221(c), 254, 403, and 410.

Subpart A – General

2. Amend Section 36.3 by revising paragraphs (a), (b), (c), (d) and (e) to read as follows:

§ 36.3 Freezing of jurisdictional separations category relationships and/or allocation factors

(a) Effective July 1, 2001, through June 30, 2014, all local exchange carriers subject to Part 36 rules shall apportion costs to the jurisdictions using their study area and/or exchange specific jurisdictional allocation factors calculated during the twelve month period ending December 31, 2000, for each of the categories/sub-categories as specified herein. Direct assignment of private line service costs between jurisdictions shall be updated annually. Other direct assignment of investment, expenses, revenues or taxes between jurisdictions shall be updated annually. Local exchange carriers that invest in telecommunications plant categories during the period July 1, 2001, through June 30, 2014, for which it had no separations allocation factors for the twelve month period ending December 31, 2000, shall apportion that investment among the jurisdictions in accordance with the separations procedures in effect as of December 31, 2000 for the duration of the freeze.

(b) Effective July 1, 2001, through June 30, 2014, local exchange carriers subject to price cap regulation, pursuant to § 61.41, shall assign costs from the Part 32 accounts to the separations categories/sub-categories, as specified herein, based on the percentage relationships of the categorized/sub-categorized costs to their associated Part 32 accounts for the twelve month period ending December 31, 2000. If a Part 32 account for separations purposes is categorized into more than one category, the percentage relationship among the categories shall be utilized as well. Local exchange carriers that invest in types of telecommunications plant during the period July 1, 2001, through June 30, 2014, for which it had no separations category investment for the twelve month period ending December 31, 2000, shall assign such investment to separations categories in accordance with the separations procedures in effect as of December 31, 2000. Local exchange carriers not subject to price cap regulation, pursuant to § 61.41 of this chapter, may elect to be subject to the provisions of § 36.3(b). Such election must be made prior to July 1, 2001. Local exchange carriers electing to become subject to § 36.3(b) shall not be eligible to withdraw from such regulation for the duration of the freeze. Local exchange carriers participating in Association tariffs, pursuant to § 69.601 et seq., shall notify the Association prior to July 1, 2001, of such intent to be subject to the provisions of § 36.3(b). Local exchange carriers not participating in Association tariffs shall notify the Commission prior to July 1, 2001, of such intent to be subject to the provisions of § 36.3(b).

(c) Effective July 1, 2001, through June 30, 2014, any local exchange carrier that sells or otherwise transfers exchanges, or parts thereof, to another carrier's study area shall continue to utilize the factors and, if applicable, category relationships as specified in §§ 36.3(a) and (b).

(d) Effective July 1, 2001, through June 30, 2014, any local exchange carrier that buys or otherwise acquires exchanges or part thereof, shall calculate new, composite factors and, if applicable, category relationships based on a weighted average of both the seller's and purchaser's factors and category relationships calculated pursuant to §§ 36.3(a) and (b). This weighted average should be based on the number of access lines currently being served by the acquiring carrier and the number of access lines in the acquired exchanges.

* * * * *

(e) Any local exchange carrier study area converting from average schedule company status, as defined in § 69.605(c), to cost company status during the period July 1, 2001, through June 30, 2014, shall, for the first twelve months subsequent to conversion categorize the telecommunications plant and expenses and develop separations allocation factors in accordance with the separations procedures in effect as of December 31, 2000. Effective July 1, 2001 through June 30, 2014, such companies shall utilize the separations allocation factors and account categorization subject to the requirements of §§ 36.3(a) and (b) based on the category relationships and allocation factors for the twelve months subsequent to the conversion to cost company status.

* * * * *

Subpart B - Telecommunications Property
Central Office Equipment

3. Amend Section 36.123 by revising paragraphs (a)(5) and (a)(6) to read as follows:

§ 36.123 Operator systems equipment - Category 1.

(a) * * *

(5) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the average balance of Account 2220, Operator Systems, to the categories/subcategories, as specified in § 36.123(a)(1), based on the relative percentage assignment of the average balance of Account 2220 to these categories/subcategories during the twelve month period ending December 31, 2000.

(6) Effective July 1, 2001 through June 30, 2014, all study areas shall apportion the costs assigned to the categories/subcategories, as specified in § 36.123(a)(1), among the jurisdictions using the relative use measurements for the twelve month period ending December 31, 2000 for each of the categories/subcategories specified in §§ 36.123 (b) through 36.123(e).

* * * * *

4. Amend Section 36.124 by revising paragraphs (c) and (d) to read as follows:

§ 36.124 Tandem switching equipment - Category 2.

* * * * *

(c) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the average balances of Accounts 2210, 2211, and 2212 to Category 2, Tandem Switching Equipment based on the relative percentage assignment of the average balances of Account 2210, 2211, 2212, and 2215 to Category 2, Tandem Switching Equipment during the twelve month period ending December 31, 2000.

(d) Effective July 1, 2001, through June 30, 2014, all study areas shall apportion costs in Category 2, Tandem Switching Equipment, among the jurisdictions using the relative number of study area minutes of use, as specified in § 36.124(b), for the twelve month period ending December 31, 2000. Direct assignment of any subcategory of Category 2 Tandem Switching Equipment between jurisdictions shall be updated annually.

* * * * *

5. Amend Section 36.125 by revising paragraphs (h), (i), and (j) to read as follows:

§ 36.125 Local switching equipment - Category 3.

* * * * *

(h) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the average balances of Accounts 2210, 2211, and 2212 to Category 3, Local Switching Equipment, based on the relative percentage assignment of the average balances of Account 2210, 2211, 2212 and 2215 to Category 3, during the twelve month period ending December 31, 2000.

(i) Effective July 1, 2001, through June 30, 2014, all study areas shall apportion costs in Category 3, Local Switching Equipment, among the jurisdictions using relative dial equipment minutes of use for the twelve month period ending December 31, 2000.

(j) If during the period from January 1, 1997, through June 30, 2014, the number of a study area's access lines increased or will increase such that, under § 36.125(f) the weighting factor would be reduced, that lower weighting factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor. The study area will restate its Category 3, Local Switching Equipment factor under § 36.125(f) and use that factor for the duration of the freeze period.

* * * * *

6. Amend Section 36.126 by revising paragraphs (b)(5), (c)(4), (e)(4), and (f)(2) to read as follows:

§ 36.126 Circuit equipment - Category 4.

* * * * *

(b) * * *

(5) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41, shall assign the average balances of Accounts 2230 through 2232 to the categories/subcategories as specified in §§ 36.126(b)(1) through (b)(4) based on the relative percentage assignment of the average balances of Accounts 2230 through 2232 costs to these categories/subcategories during the twelve month period ending December 31, 2000.

(c) * * *

(4) Effective July 1, 2001, through June 30, 2014, all study areas shall apportion costs in the categories/subcategories, as specified in §§ 36.126(b)(1) through (b)(4), among the jurisdictions using the relative use measurements or factors, as specified in §§ 36.126(c)(1) through (c)(3) for the twelve month period ending December 31, 2000. Direct assignment of any subcategory of Category 4.1 Exchange Circuit Equipment to the jurisdictions shall be updated annually.

* * * * *

(e) * * *

(4) Effective July 1, 2001, through June 30, 2014, all study areas shall apportion costs in the categories/subcategories specified in §§ 36.126(e)(1) through (e)(3) among the jurisdictions using relative use measurements or factors, as specified in §§ 36.126(e)(1) through (e)(3) for the twelve month period ending December 31, 2000. Direct assignment of any subcategory of Category 4.2 Interexchange Circuit Equipment to the jurisdictions shall be updated annually.

(f) * * *

(2) Effective July 1, 2001, through June 30, 2014, all study areas shall apportion costs in the subcategory specified in § 36.126(f)(1) among the jurisdictions using the allocation factor, as specified in § 36.126(f)(1)(i), for this subcategory for the twelve month period ending December 31, 2000. Direct assignment of any Category 4.3 Host/Remote Message Circuit Equipment to the jurisdictions shall be updated annually.

* * * * *

Information Origination/Termination Expenses

7. Amend Section 36.141 by revising paragraph (c) to read as follows:

§ 36.141 General.

* * * * *

(c) Effective July 1, 2001, through June 30, 2014, local exchange carriers subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the average balance of Account 2310 to the categories, as specified in § 36.141(b), based on the relative percentage assignment of the average balance of Account 2310 to these categories during the twelve month period ending December 31, 2000.

* * * * *

8. Amend Section 36.142 by revising paragraph (c) to read as follows:

§ 36.142 Categories and apportionment procedures.

* * * * *

(c) Effective July 1, 2001, through June 30, 2014, all study areas shall apportion costs in the categories, as specified in § 36.141(b), among the jurisdictions using the relative use measurements or factors, as specified in § 36.142(a), for the twelve month period ending December 31, 2000. Direct assignment of

any category of Information Origination/Termination Equipment to the jurisdictions shall be updated annually.

* * * * *

Cable and Wire Facilities

9. Amend Section 36.152 by revising paragraph (d) to read as follows:

§ 36.152 Categories of Cable and Wire Facilities (C&WF).

* * * * *

(d) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41, shall assign the average balance of Account 2410 to the categories/subcategories, as specified in §§ 36.152(a) through (c), based on the relative percentage assignment of the average balance of Account 2410 to these categories/subcategories during the twelve month period ending December 31, 2000.

* * * * *

10. Amend Section 36.154 by revising paragraph (g) to read as follows:

§ 36.154 Exchange Line Cable and Wire Facilities (C&WF) - Category 1 – apportionment procedures.

* * * * *

(g) Effective July 1, 2001, through June 30, 2014, all study areas shall apportion Subcategory 1.3 Exchange Line C&WF among the jurisdictions as specified in § 36.154(c). Direct assignment of subcategory Categories 1.1 and 1.2 Exchange Line C&WF to the jurisdictions shall be updated annually as specified in § 36.154(b).

* * * * *

11. Amend Section 36.155 by revising paragraph (b) to read as follows:

§ 36.155 Wideband and exchange trunk (C&WF) - Category 2 - apportionment procedures.

* * * * *

(b) Effective July 1, 2001, through June 30, 2014, all study areas shall apportion Category 2 Wideband and exchange trunk C&WF among the jurisdictions using the relative number of minutes of use, as specified in § 36.155(a), for the twelve-month period ending December 31, 2000. Direct assignment of any Category 2 equipment to the jurisdictions shall be updated annually.

* * * * *

12. Amend Section 36.156 by revising paragraph (c) to read as follows:

§ 36.156 Interexchange Cable and Wire Facilities (C&WF) - Category 3 - apportionment procedures.

* * * * *

(c) Effective July 1, 2001, through June 30, 2014, all study areas shall directly assign Category 3 Interexchange Cable and Wire Facilities C&WF where feasible. All study areas shall apportion the non-directly assigned costs in Category 3 equipment to the jurisdictions using the relative use measurements, as specified in § 36.156(b), during the twelve-month period ending December 31, 2000.

* * * * *

13. Amend Section 36.157 by revising paragraph (b) to read as follows:

§ 36.157 Host/remote message Cable and Wire Facilities (C&WF) - Category 4 - apportionment procedures.

* * * * *

(b) Effective July 1, 2001, through June 30, 2014, all study areas shall apportion Category 4 Host/Remote message Cable and Wire Facilities C&WF among the jurisdictions using the relative number of study area minutes-of-use kilometers applicable to such facilities, as specified in § 36.157(a)(1), for the twelve month period ending December 31, 2000. Direct assignment of any Category 4 equipment to the jurisdictions shall be updated annually.

* * * * *

Equal Access Equipment

14. Amend Section 36.191 by revising paragraph (d) to read as follows:

§ 36.191 Equal access equipment.

* * * * *

(d) Effective July 1, 2001, through June 30, 2014, all study areas shall apportion Equal Access Equipment, as specified in § 36.191(a), among the jurisdictions using the relative state and interstate equal access traffic, as specified in § 36.191(c), for the twelve month period ending December 31, 2000.

* * * * *

Subpart C - Operating Revenues and Certain Income Accounts
Operating Revenues

15. Amend Section 36.212 by revising paragraph (c) to read as follows:

§ 36.212 Basic local services revenue—Account 5000 (Class B telephone companies); Basic area revenue—Account 5001 (Class A telephone companies).

* * * * *

(c) Wideband Message Service revenues from monthly and miscellaneous charges, service connections, move and change charges, are apportioned between state and interstate operations on the basis of the relative number of minutes-of-use in the study area. Effective July 1, 2001, through June 30, 2014, all

study areas shall apportion Wideband Message Service revenues among the jurisdictions using the relative number of minutes of use for the twelve-month period ending December 31, 2000.

* * * * *

16. Amend Section 36.214 by revising paragraph (a) to read as follows:

§ 36.214 Long distance message revenue - Account 5100.

(a) Wideband message service revenues from monthly and miscellaneous charges, service connections, move and change charges, are apportioned between state and interstate operations on the basis of the relative number of minutes-of-use in the study area. Effective July 1, 2001, through June 30, 2014, all study areas shall apportion Wideband Message Service revenues among the jurisdictions using the relative number of minutes of use for the twelve-month period ending December 31, 2000.

* * * * *

Subpart D - Operating Expenses and Taxes
Customer Operations Expenses

17. Amend Section 36.372 by revising to read as follows:

§ 36.372 Marketing—Account 6610 (Class B telephone companies); Accounts 6611 and 6613 (Class A telephone companies).

The expenses in this account are apportioned among the operations on the basis of an analysis of current billing for a representative period, excluding current billing on behalf of others and billing in connection with intercompany settlements. Effective July 1, 2001, through June 30, 2014, all study areas shall apportion expenses in this account among the jurisdictions using the analysis, as specified in § 36.372(a), during the twelve-month period ending December 31, 2000.

* * * * *

18. Amend Section 36.374 by revising paragraphs (b) and (d) to read as follows:

§ 36.374 Telephone Operator Services.

* * * * *

(b) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the Telephone operator expense classification based on the relative percentage assignment of the balance of Account 6620 to this classification during the twelve month period ending December 31, 2000.

* * * * *

(d) Effective July 1, 2001, through June 30, 2014, all study areas shall apportion Telephone operator expenses among the jurisdictions using the relative number of weighted standard work seconds, as specified in § 36.374(c), during the twelve-month period ending December 31, 2000.

* * * * *

19. Amend Section 36.375 by revising paragraphs (b)(4) and (b)(5) to read as follows:

§ 36.375 Published directory listing.

* * * * *

(b) * * *

(4) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41, shall assign the balance of Account 6620-Services to the classifications, as specified in §§ 36.375(b)(1) through 36.375(b)(4), based on the relative percentage assignment of the balance of Account 6620 to these classifications during the twelve month period ending December 31, 2000.

(5) Effective July 1, 2001, through June 30, 2014, all study areas shall apportion Published directory listing expenses using the underlying relative use measurements, as specified in §§ 36.375(b)(1) through 36.375(b)(4), during the twelve-month period ending December 31, 2000. Direct assignment of any Publishing directory listing expense to the jurisdictions shall be updated annually.

* * * * *

20. Amend Section 36.377 by revising paragraphs (a), (a)(1)(ix), (a)(2)(vii), (a)(3)(vii), (a)(4)(vii), (a)(5)(vii), and (a)(6)(vii) to read as follows:

§ 36.377 Category 1 - Local business office expense.

(a) The expense in this category for the area under study is first segregated on the basis of an analysis of job functions into the following subcategories: End user service order processing; end user payment and collection; end user billing inquiry; interexchange carrier service order processing; interexchange carrier payment and collection; interexchange carrier billing inquiry; and coin collection and administration. Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the subcategories, as specified in § 36.377(a), based on the relative percentage assignment of the balance of Account 6620 to these categories/subcategories during the twelve month period ending December 31, 2000.

(1) * * *

(ix) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the categories/subcategories, as specified in §§ 36.377(a)(1)(i) through 36.377(a)(1)(viii), based on the relative percentage assignment of the balance of Account 6620 to these categories/subcategories during the twelve month period ending December 31, 2000. Effective July 1, 2001, through June 30, 2014, all study areas shall apportion TWX service order processing expense, as specified in § 36.377(a)(1)(viii) among the jurisdictions using relative billed TWX revenues for the twelve-month period ending December 31, 2000. All other subcategories of End-user service order processing expense, as specified in §§ 36.377(a)(1)(i) through 36.377(a)(1)(viii), shall be directly assigned.

(2) * * *

(vii) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620- Services to the subcategories, as specified in §§ 36.377(a)(2)(i) through 36.377(a)(2)(vi), based on the relative percentage assignment of the balance of Account 6620 to these categories/subcategories during the twelve month period ending

December 31, 2000. All other subcategories of End User payment and collection expense, as specified in §§ 36.377(a)(2)(i) through 36.377(a)(2)(v), shall be directly assigned.

(3) * * *

(vii) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the subcategories, as specified in §§ 36.377(a)(3)(i) through 36.377(a)(3)(vi), based on the relative percentage assignment of the balance of Account 6620 to these subcategories during the twelve month period ending December 31, 2000. All other subcategories of End user billing inquiry expense, as specified in §§ 36.377(a)(3)(i) through 36.377(a)(3)(vi) shall be directly assigned.

(4) * * *

(vii) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the subcategories, as specified in §§ 36.377(a)(4)(i) through 36.377(a)(4)(vi), based on the relative percentage assignment of the balance of Account 6620 to these subcategories during the twelve month period ending December 31, 2000. All subcategories of Interexchange carrier service order processing expense, as specified in §§ 36.377(a)(4)(i) through 36.377(a)(4)(vi), shall be directly assigned.

(5) * * *

(vii) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the subcategories, as specified in §§ 36.377(a)(5)(i) through 36.377(a)(5)(vi), based on the relative percentage assignment of the balance of Account 6620 to these subcategories during the twelve month period ending December 31, 2000. All subcategories of Interexchange carrier payment expense, as specified in §§ 36.377(a)(5)(i) through 36.377(a)(5)(vi), shall be directly assigned.

(6) * * *

(vii) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the subcategories, as specified in §§ 36.377(a)(6)(i) through 36.377(a)(6)(vi), based on the relative percentage assignment of the balance of Account 6620 to these subcategories during the twelve month period ending December 31, 2000. All subcategories of Interexchange carrier billing inquiry expense, as specified in §§ 36.377(a)(6)(i) through 36.377(a)(6)(vi), shall be directly assigned.

* * * * *

21. Amend Section 36.378 by revising paragraph (b)(1) to read as follows:

§ 36.378 Category 2 - Customer services (revenue accounting).

* * * * *

(b) * * *

(1) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the classifications, as

specified in § 36.378(b), based on the relative percentage assignment of the balance of Account 6620 to those classifications during the twelve month period ending December 31, 2000.

* * * * *

22. Amend Section 36.379 by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 36.379 Message processing expense.

* * ** *

(b) * * *

(1) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the subcategories, as specified in § 36.379(b), based on the relative percentage assignment of the balance of Account 6620 to those subcategories during the twelve month period ending December 31, 2000.

(2) Effective July 1, 2001, through June 30, 2014, all study areas shall apportion Toll Ticketing Processing Expense among the jurisdictions using the relative number of toll messages for the twelve-month period ending December 31, 2000. Local Message Process Expense is assigned to the state jurisdiction.

* * * * *

23. Amend Section 36.380 by revising paragraphs (d) and (e) to read as follows:

§ 36.380 Other billing and collecting expense.

* * * * *

(d) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the Other billing and collecting expense classification based on the relative percentage assignment of the balance of Account 6620 to those subcategory during the twelve month period ending December 31, 2000.

(e) Effective July 1, 2001, through June 30, 2014, all study areas shall apportion Other billing and collecting expense among the jurisdictions using the allocation factor utilized, pursuant to §§ 36.380(b) or (c), for the twelve month period ending December 31, 2000.

* * * * *

24. Amend Section 36.381 by revising paragraphs (c) and (d) to read as follows:

§ 36.381 Carrier access charge billing and collecting expense.

* * * * *

(c) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the Carrier access charge billing and collecting expense classification based on the relative percentage assignment of the balance of Account 6620 to that classification during the twelve month period ending December 31, 2000.

(d) Effective July 1, 2001, through June 30, 2014, all study areas shall apportion Carrier access charge billing and collecting expense among the jurisdictions using the allocation factor, pursuant to § 36.381(b), for the twelve-month period ending December 31, 2000.

* * * * *

25. Amend Section 36.382 by revising paragraph (a) to read as follows:

§ 36.382 Category 3 - All other customer services expense.

(a) Effective July 1, 2001, through June 30, 2014, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to this category based on the relative percentage assignment of the balance of Account 6620 to this category during the twelve month period ending December 31, 2000.

* * * * *

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided above. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the Further Notice and the IRFA (or summaries thereof) will be published in the Federal Register.

A. Need for, and Objectives of, the Proposed Rules

2. In the *1997 Separations Notice*, the Commission noted that the network infrastructure by that time had become vastly different from the network and services used to define the cost categories appearing in the Commission's Part 36 jurisdictional separations rules, and that the separations process codified in Part 36 was developed during a time when common carrier regulation presumed that interstate and intrastate telecommunications service must be provided through a regulated monopoly.[3] Thus, the Commission initiated a proceeding with the goal of reviewing comprehensively the Commission's Part 36 procedures to ensure that they meet the objectives of the Telecommunications Act of 1996 (1996 Act).[4] The Commission sought comment on the extent to which legislative changes, technological changes, and market changes might warrant comprehensive reform of the separations process.[5] More than twelve years have elapsed since the closing of the comment cycle on the *1997 Separations Notice*, and over ten years have elapsed since the imposition of the freeze. The industry has experienced myriad changes during that time, including reform of universal service and intercarrier compensation;[6] therefore, we ask for comment on the impact of a further extension of the freeze.

3. The purpose of the proposed extension of the freeze is to ensure that the Commission's separations rules meet the objectives of the 1996 Act, and to allow the Commission additional time to consider changes that may need to be made to the separations process in light of changes in the law, technology, and market structure of the telecommunications industry.[7]

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[1] 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22126, para. 9 (1997) (*1997 Separations Notice*). Comments on the *1997 Separations Notice* were due December 10, 1997, and reply comments were due January 26, 1998. *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, 62 Fed. Reg. 59842 (Nov. 5, 1997).

[4] *See 1997 Separations Notice*, 12 FCC Rcd at 22122, para. 2.

[5] *See id.* at 22126–31, paras. 9–19.

[6] *See Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011), *pets. for review pending, Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

[7] *See id.* at 22122, para. 2.

B. Legal Basis

4. The legal basis for the Further Notice of Proposed Rulemaking is contained in sections 1, 2, 4(i), 201-205, 215, 218, 220, and 410 of the Communications Act of 1934, as amended.[8]

C. Description and Estimate of the Number of Small Entities to Which Rules May Apply

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[9] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[10] In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act.[11] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[12]

6. We have included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard established by the SBA, and is not dominant in its field of operation. Section 121.201 of the SBA regulations defines a small wireline telecommunications business as one with 1,500 or fewer employees.[13] In addition, the SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[14] Because our proposals concerning the Part 36 separations process will affect all incumbent LECs providing interstate services, some entities employing 1500 or fewer employees may be affected by the proposals made in this Further Notice. We therefore have included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

7. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.[15] Under the SBA definition, a carrier is small if it has 1,500 or fewer employees.[16] According to the FCC's Telephone Trends Report data, 1,307

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[8] 47 U.S.C. §§ 151, 152, 154(i), 201–205, 215, 218, 220, 410.

[9] *See* 5 U.S.C. § 603(b)(3).

[10] 5 U.S.C. § 601(6).

[11] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[12] 15 U.S.C. § 632.

[13] 13 C.F.R. § 121.201, NAICS code 517110.

[14] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[15] NAICS code 513310.

[16] 13 C.F.R. § 121.201, NAICS code 517110.

incumbent LECs reported that they were engaged in the provision of local exchange services.[17] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[18] Consequently, the Commission estimates that most incumbent LECs are small entities that may be affected by the rules and policies adopted herein.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

8. None.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

9. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.[19]

10. As described above, more than ten years have elapsed since the imposition of the freeze, thus, we are seeking comment on the impact of a further extension of the freeze. We seek comment on the effects our proposals would have on small entities, and whether any rules that we adopt should apply differently to small entities. We direct commenters to consider the costs and burdens of an extension on small incumbent LECs and whether the extension would disproportionately affect specific types of carriers or ratepayers.

11. We believe that implementation of the proposed freeze extension would ease the administrative burden of regulatory compliance for LECs, including small incumbent LECs. The freeze has eliminated the need for all incumbent LECs, including incumbent LECs with 1500 employees or fewer, to complete certain annual studies formerly required by the Commission's rules. If an extension of the freeze can be said to have any affect under the RFA, it is to reduce a regulatory compliance burden for small incumbent LECs by relieving these carriers from the burden of preparing separations studies and providing these carriers with greater regulatory certainty.

F. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules

12. None.

[17] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3, page 5-5 (Sep. 2010). This source uses data that are current as of October 13, 2008.

[18] *Id.*

[19] *See* 5 U.S.C. § 603(c)(1)–(4).