

**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 Pioneer Telephone Cooperative, Inc. for Waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships	)	DA 13-786

**COMMENTS OF  
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”),<sup>1</sup> hereby files these comments in response to the April 18, 2013 Public Notice<sup>2</sup> issued by the Federal Communications Commission (“Commission”) seeking comment on the Pioneer Telephone Cooperative, Inc. (“Pioneer”) petition<sup>3</sup> for waiver concerning the Commission’s Part 36 jurisdictional separation rules. NTCA supports Pioneer’s petition, and urges the Commission to grant it expeditiously.

**I. BACKGROUND**

On March 22, 2013, Pioneer filed its Petition, seeking a waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 as those rules apply to frozen

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<sup>1</sup> NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

<sup>2</sup> *Comment Sought on a Petition Filed by Pioneer Telephone Cooperative, Inc. for Waiver Concerning the Commission’s Part 36 Jurisdictional Separations Rules*, CC Docket No. 80-286, DA 13-786 (rel. April 18, 2013) (“Public Notice”).

<sup>3</sup> *Petition of Pioneer Telephone Cooperative, Inc. for Waiver of 47 C.F.R. Section 36.3, 36.123-126, 36.141, 36.152-157, 36.191 And 36.372-382 To Unfreeze Part 36 Category Relationships*, CC Docket No. 80-286 (fil. Mar. 22, 2013) (“Petition”).

category relationships. Pioneer serves approximately 45,000 access lines and offers voice and broadband Internet access service to individual households as well as schools, libraries, public safety and law enforcement entities, and hospitals and other medical facilities.<sup>4</sup> It does so in a sparsely-populated rural area of the nation.<sup>5</sup>

Like a number of other rural rate-of-return regulated carriers, Pioneer opted to freeze its category relationships following a 2001 Commission Order.<sup>6</sup> Initially, the freeze was set to expire on June 30, 2006, or when the Commission completed comprehensive separations reform, whichever came first.<sup>7</sup> In 2006, the FCC extended the freeze for three years or until the Commission completed comprehensive separations reform, whichever came first, and then repeatedly extended the freeze for one year intervals, with the most recent decision extending the freeze until June 30, 2014.<sup>8</sup>

## **II. GOOD CAUSE EXISTS TO GRANT THE PIONEER TELEPHONE COOPERATIVE PETITION FOR WAIVER OF THE COMMISSION'S PART 36 SEPARATIONS FREEZE**

The Commission may waive any of its rules for good cause shown, such as where strict compliance with a rule would be inconsistent with the public interest.<sup>9</sup> Pioneer has demonstrated good cause, and grant of its waiver petition is in the best interests of the consumers served by the company, and will not harm any other providers or burden the High-Cost Program.

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<sup>4</sup> *Id.*, pp. 1-2.

<sup>5</sup> *Id.*

<sup>6</sup> *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, Report and Order, CC Docket No. 80-286 (rel. May 22, 2001).

<sup>7</sup> *Id.*, ¶ 9.

<sup>8</sup> *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, Report and Order, CC Docket No. 80-286, FCC 12-49 (rel. May 8, 2012).

<sup>9</sup> 47 C.F.R. § 1.3.

As discussed in its Petition, Pioneer has made substantial investments in voice and broadband-capable facilities in response to customer demand.<sup>10</sup> These investments were made with the expectation that the Commission's 2001 Separations Report and Order would be lifted in 2006, as the Order originally stated. It was never anticipated by Pioneer, or even the Commission itself, that the separations freeze would last for 12 years. During that time, Pioneer has been unable to properly allocate its costs to the interstate jurisdiction, thereby causing it to forgo cost-based settlements that it would otherwise have been able to receive.

Grant of the Pioneer waiver would enable the company to allocate additional costs to the interstate jurisdiction, such that those costs could then be eligible for recovery from interstate settlement pools. Importantly, the grant of the Pioneer waiver would not result in the company receiving any additional high-cost Universal Service Fund (USF) support.<sup>11</sup> In fact, Pioneer indicates that grant of its petition would result in the carrier receiving less in High Cost Funds.<sup>12</sup>

In addition, grant of the waiver would enable Pioneer to recover costs that it would not otherwise be able to recover. As noted in its Petition, while these costs that would have otherwise been allocated to the interstate jurisdiction have been allocated to the intrastate jurisdiction, Pioneer has not been able to recover them from a state universal service fund. Indeed, as Pioneer states, the effect has been that the costs in question have been, and will be, unrecoverable in the absence of the relief requested.<sup>13</sup>

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<sup>10</sup> Petition, p. 4.

<sup>11</sup> *Id.*, pp. 5-6

<sup>12</sup> *Id.*, p. 6.

<sup>13</sup> *Id.*, p. 7.

As Pioneer notes, if granted, the waiver requested by Pioneer would result in it receiving funds that would be used to “continue to expand and upgrade its network and enhance broadband service to its customers, anchor institutions and other providers that rely on a robust voice and broadband network.”<sup>14</sup> Such a result would further the universal service goals of the Commission, without an additional burden on the High-Cost Program, and is thus clearly in the public interest. NTCA recognizes that the Commission would prefer to reform separations in a holistic manner. However, twelve years after the initial separations freeze, it is more than clear that comprehensive reform of this complicated issue requires further analysis and examination. In an era of reduced resources, it is critical that carriers such as Pioneer are afforded every effort to recover the legitimate costs incurred in providing voice and broadband services to difficult-to-serve rural areas.

### III. CONCLUSION

For these reasons, the Commission should expeditiously grant Pioneer’s Petition.

Respectfully submitted,

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<sup>14</sup> *Id.*, p. 8.