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 26, 2014 **Released: March 27, 2014**

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 propose to extend the freeze of jurisdictional separations category relationships and cost allocation factors in Part 36 of the Commission's rules[1] for three years, through June 30, 2017. We also propose to direct the Wireline Competition Bureau (Bureau) to open a filing "window" for rate-of-return incumbent local exchange carriers (LECs) to file waiver requests to unfreeze their jurisdictional separations category relationships. That filing window would invite and encourage any rate-of-return incumbent LEC that opted, in 2001, to freeze its category relationships and no longer wishes to continue the freeze to submit its waiver petition within the filing window, so that such requests may be considered in a consistent and coordinated manner. We seek comment on these proposals.

2. The Commission notes the need for expediency in completing this rulemaking because the freeze of our separations rules expires on July 1, 2014. In addition, interested parties are familiar with the issues involved in extending the freeze of our separations rules as the Commission has previously extended them multiple times.

II. BACKGROUND

3. Jurisdictional separations is the process by which incumbent LECs apportion regulated costs between the intrastate and interstate jurisdictions. Incumbent LECs record their costs pursuant to Part 32 of the Commission's regulations.[2] These costs are then divided between regulated and unregulated costs pursuant to Part 64 of the Commission's regulations.[3] Incumbent LECs then perform the jurisdictional separations process pursuant to Part 36 of the Commission's rules.[4]

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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, 27 FCC Rcd 5593 (2012) (*2012 Separations Freeze Extension Order*) (extending the separations freeze, through June 30, 2014); 47 C.F.R. §§ 36.1–507.

[2] 47 C.F.R. Part 32.

[3] 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.

(continued….)

4. The jurisdictional separations process itself 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.[5] Second, the costs in each category are apportioned between the intrastate and interstate jurisdictions.[6] 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.[7]

5. The statute requires the Commission to refer to the Federal-State Joint Board on Jurisdictional Separations (Joint Board) proceeding regarding "the jurisdictional separations of common carrier property and expenses between interstate and intrastate operations" that the Commission institutes pursuant to a notice of proposed rulemaking.[8] 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.[9] The Commission also 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.[10] The State Members filed a report setting forth additional issues that they believed 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.[11] The Commission noted that the current network infrastructure was vastly different from the network and services used to define the cost categories appearing in the Commission's Part 36 rules.[12]

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§ 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).

[4] 47 C.F.R. Part 36. 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 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"); *see* also 47 U.S.C § 152(b)(1) (the Commission does not have jurisdiction over "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier").

[5] 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.

[6] Part 69 of the Commission's regulations identifies how incumbent LECs may recover their interstate costs.

[7] 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).

[8] 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).

[9] *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*).

[10] *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*).

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

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

6. On July 21, 2000, the Joint Board issued its *2000 Separations Recommended Decision*, recommending that, until comprehensive reform could be achieved, the Commission: (i) freeze Part 36 category relationships and jurisdictional allocation factors for incumbent LECs subject to price cap regulation (price cap incumbent LECs); and (ii) freeze the allocation factors for incumbent LECs subject to rate-of-return regulation (rate-of-return incumbent LECs).[13] In the *2001 Separations Freeze Order*, the Commission generally adopted the Joint Board's recommendation.[14] 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.[15] 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.[16] Under the freeze, price cap incumbent LECs calculate: (1) the relationships between categories of 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 incumbent LECs 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.[17]

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.[18] 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

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[13] *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.

[14] *2001 Separations Freeze Order*, 16 FCC Rcd at 11387–88, para. 9.

[15] *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.

[16] 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.

[17] *Id.* at 11388–89, para. 11.

[18] *See id*. at 11387–88, para. 9.

extended.[19] 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."[20]

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.[21] The Commission concluded that extending the freeze would provide stability to 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.[22] The freeze was subsequently extended by one year in 2009,[23] 2010,[24] and 2011[25] and by two years in 2012.[26]

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.[27] 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.[28] On March 30, 2010, the State Members of the Joint Board released a proposal for interim and comprehensive separations reform.[29] 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.[30] The Joint Board staff conducted an extensive analysis of various approaches to separations reform, and the Joint Board is evaluating that analysis.

10. In addition, in 2011, the Commission comprehensively reformed the universal service and intercarrier compensation systems[31] and proposed additional reforms.[32] The Joint Board is

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

[20] *Id*.

[21] *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*).

[22] *Id*.

[23] *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*).

[24] *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*).

[25] *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*).

[26] *2012 Separations Freeze Extension Order*, 27 FCC Rcd at 5597, para. 12.

[27] *2009 Separations Freeze Extension Order*, 24 FCC Rcd 6167–69, paras. 15–20.

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

[29] *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).

[30] *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).

[31] *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *pets. for review pending, Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

considering the impact of the reforms proposed by the *USF/ICC Transformation Order* and any subsequent changes on its analysis of the various approaches to separations reform.

III. DISCUSSION

A. Jurisdictional Separations Freeze Extension

11. 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 to allow the Joint Board to consider these recent and proposed reforms before it issues a Recommended Decision. We propose to extend the freeze for three years, through June 30, 2017.

12. We also believe that a three-year freeze extension serves the public interest. 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 used since the inception of the freeze more than twelve years ago.[33] Reinstating these requirements would require substantial training and investment. Moreover, given the significant changes in technologies and investment decisions, as well as changes in regulatory approaches at both the State and federal levels, the existing separations rules are likely outdated. We thus question whether reinstating the rules would serve the public interest. The Joint Board on Jurisdictional Separations has a pending referral to consider broadly what changes to the separations rules are appropriate. It will take significant time to address any recommendations that the Joint Board may ultimately propose. We thus believe that a three-year extension is appropriate. We seek comment on these proposals.

13. We seek comment on the effect that our proposal to extend the freeze would 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 would provide rate-of-return incumbent LECs with a reasonable methodology to apportion costs and – due to the burden it would impose on incumbent LECs – would be preferable to allowing the previous separations requirements to resume.[34] We seek comment on this matter. In addition, we propose that the freeze extension be implemented as described in the *2001 Separations Freeze Order*.[35] Specifically, price cap incumbent LECs 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 incumbent LECs will use the same frozen jurisdictional allocation factors, and will (absent a waiver) use the same frozen category relationships if they had opted previously to freeze those. We seek comment on these proposals.

B. Filing Window for Rate-of-Return Incumbent LECs to Petition to Unfreeze Their Cost Category Relationships

15. In 2001, when the Commission initiated the freeze, rate-of-return incumbent LECs were given the option of freezing their cost category relationships.[36] Fewer than 100 rate-of-return incumbent

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[32] *Id*. at 26 FCC Rcd at 18047–18149, paras. 1028–1403.

[33] *See 2012 Separations Freeze Extension Order*, 27 FCC Rcd at 5598, para. 14.

[34] *See id.* at 5597, para. 13.

[35] *2001 Separations Freeze Order*, 16 FCC Rcd at 11393–408, paras. 18–55 (describing the components of the freeze in detail).

[36] All other aspects of the freeze were mandatory.

LECs elected to freeze their category relationships. Some of those incumbent LECs have since converted to price cap regulation. Since 2006, four rate-of-return incumbent LECs have sought waivers to unfreeze their category relationships.[37] We granted two waiver petitions and two remain pending.[38]

16. Rate-of-return incumbent LECs that elected to freeze their cost category relationships did so with the expectation that the freeze would likely last only five years. Instead the freeze has remained in effect for 13 years. Since 2006, there have been many changes in technology, customer demand and investment decisions that could not have been anticipated in 2001 when rate-of-return carriers had to decide whether to elect the cost category relationships freeze. In addition, the *USF/ICC Transformation Order* modified rules that affect rate-of-return incumbent LECs' opportunities to recover costs assigned to switched services.[39]

17. We thus recognize that rate-of-return carriers that elected to freeze their cost category relationships did so with the expectation that the election would be limited in duration. Because the freeze has been extended multiple times, those carriers may be at a disadvantage relative to rate-of-return carriers that did not elect the freeze. Based on these facts, we propose to direct the Bureau to provide "frozen" rate-of-return incumbent LECs a specific opportunity (a filing window) to request approval to unfreeze their cost category relationships. Such petitions must contain the necessary documentation to support a waiver, which could include: the unique circumstances of petitioner's service area, such as size and configuration; changes made to petitioner's network since initiation of the 2001 freeze and the reasons for those changes; and demonstration of the impact that a waiver would have on petitioner's switched and special access rates, if any; how a revised allocation of switched access revenues would impact a petitioner's intercarrier compensation Eligible Recovery;[40] and the impact that a waiver would have on the Universal Service Fund. To prevent over-recovery, the Bureau will also require, as a condition of receiving a waiver, that the carrier file certain revised 2011 rate-of-return Base Period Revenue data reflecting changes in category relationships the carrier makes pursuant to any relief granted.[41] Opening a filing window would permit the Bureau to consider waivers in a consistent and coordinated manner. Carriers would not be required to seek waivers during the window nor barred from filing waivers after the window has closed, but we believe that a filing window would create a more efficient process for all interested parties. We seek comment on this proposal.

IV. PROCEDURAL MATTERS

18. *Comment Filing Procedures*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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[37] *See Petition by Gila River Telecommunications, Inc. Pursuant to 47 C.F.R Sections 36.3, 36.123 – 126, 36.152 - 157, and 36.372 -382 for Commission Approval to Unfreeze Part 36 Category Relationships*, CC Docket No. 80-286, Order, 25 FCC Rcd 17459 (2010) and *Petition by Eastex Telephone Cooperative, Inc. Pursuant to 47 C.F.R Sections 36.3, 36.123 – 126, 36.152 -157, and 36.372 -382 for Commission Approval to Unfreeze Part 36 Category Relationships*, CC Docket No. 80-286, Order, 27 FCC Rcd 6357 (Wireline Comp. Bur. 2012) (*Eastex Order)*.

[38] *See Comment Sought on a Petition Filed by Terral Telephone Company, Inc. for Waiver Concerning the Commission's Part 36 Jurisdictional Separations Rules*, CC Docket No. 80-286, Public Notice, 27 FCC Rcd 13226 (Wireline Comp. Bur. 2012) and *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, Public Notice, 28 FCC Rcd 5205 (Wireline Comp. Bur. 2013).

[39] See *USF/ICC Transformation Order*, 26 FCC Rcd at 17956-87, paras. 847-904.

[40] *See* 47 C.F.R. § 51.917(d).

[41] The Bureau imposed this requirement as a condition of the *Eastex Order*, 27 FCC Rcd 6357, para. 1.

- 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 one copy 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 messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

  - 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, SW, Washington DC 20554.

19. *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).

20. *Ex Parte Presentations*. The proceeding this Further Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[42] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

21. *Paperwork Reduction Act*. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it 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, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

[42] 47 C.F.R. §§ 1.1200 *et seq.*

22. *Initial Regulatory Flexibility Act Analysis*. As required by the Regulatory Flexibility Act of 1980 (RFA),[43] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this Further Notice of Proposed Rulemaking, of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in the Appendix.[44] 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 indicated on the first page of this document. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[45]

23. For further information regarding this proceeding, contact Greg Haledjian, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1520, or gregory.haledjian@fcc.gov.

V. ORDERING CLAUSES

24. 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.

25. 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.

26. 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
Secretary

[43] *See* 5 U.S.C. § 603.

[44] *See infra* Appendix.

[45] *See* 5 U.S.C. § 603(a).

APPENDIX

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 fourteen years have elapsed since the closing of the comment cycle on the *1997 Separations Notice*, and over twelve 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] *See* 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, 26 FCC Rcd 17663, 17904-18045, paras. 736-1011 (2011) (*USF/ICC Transformation Order*), *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 1997 Separations Notice*, 12 FCC Rcd 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 the Small Business Act.[11] A "small business concern" is one which: (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] Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.[13]

6. **Incumbent Local Exchange Carriers (incumbent LECs)**. 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.[14] Under the SBA definition, a carrier is small if it has 1,500 or fewer employees.[15] According to the FCC's Telephone Trends Report data, 1,307 incumbent LECs reported that they were engaged in the provision of local exchange services.[16] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[17] Consequently, the Commission estimates that most incumbent LECs are small entities that may be affected by the rules and policies adopted herein.

7. 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 (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[18] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs

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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] *See* 5 U.S.C. § 601(6).

[11] *See* 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] *See* 15 U.S.C. § 632.

[13] *See* SBA, Office of Advocacy, "Frequently Asked Questions," *available at* http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf (last accessed March 14, 2014).

[14] *See* 13 C.F.R. § 121.201, NAICS code 513310.

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

[16] See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, at Table 5.3, page 5-5 (Sep. 2010).

[17] *Id*.

[18] *See* 5 U.S.C. § 601(3).

are not dominant in their field of operation because any such dominance is not "national" in scope.[19] Because our proposals concerning the Part 36 separations process will affect all incumbent LECs providing interstate services, some entities employing 1,500 or fewer employees may be affected by the proposals made in this Further Notice. We have therefore 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.

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.[20]

10. As described above, more than twelve 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 1,500 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 effect 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.

[19] *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).

[20] *See* 5 U.S.C. § 603(c)(1)–(4).