

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

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

**COMMENTS OF
THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

In a March 27, 2014 Further Notice of Proposed Rulemaking (“FNPRM”) in this docket, the Federal Communications Commission (“FCC” or “Commission”) proposed to continue the separations¹ freeze² for three more years, through June 30, 2017. The FCC also asked for comment on a proposal to allow rural LECs a filing window to “unfreeze” their separations.³

This is ancient history. In 2006, the National Association of State Utility Consumer Advocates (“NASUCA”), the New Jersey Division of Rate Counsel, and the Maine Office of Public Advocate filed joint comments (“2006 Joint Comments”) – including attached expert affidavits—that addressed the vital need **then** to reform separations, given the immense changes in the network since the freeze had been imposed in 2001.⁴ But that was before it became clear

¹ Separations is “the process by which incumbent [local exchange carriers] LECs apportion regulated costs between the interstate and intrastate jurisdictions.” FNPRM, FCC 14-27 (rel. March 27, 2014), ¶ 1.

² The freeze has been in place since 2001. *Id.*, ¶ 6.

³ *Id.*, ¶ 1.

⁴ The comments are accessible at <http://apps.fcc.gov/ecfs/document/view?id=6518439161>; the affidavit of Susan Baldwin is accessible at <http://apps.fcc.gov/ecfs/document/view?id=6518439162>; and the affidavit of Dr. Robert

that the Commission – for no expressed continuing reason – simply did not want to address separations issues. Since then, the Commission has extended the initial freeze again and again.⁵

NASUCA's position has been consistent.⁶ That consistency remains steady today, when the Commission proposes extending the freeze until 2017.

At this point, the one part of the Internet Protocol (IP) transition that the FCC seems to have totally overlooked is the joint and common cost basis of the various services being offered over these new transitioned networks. Whether the services are traditional or IP-based, or inter- or intrastate,⁷ their costs are based on separations factors that are more than a decade old. The current separations factors thus ignore the increasing variety of services offered over these interwoven, interconnected and interdependent networks.

Specifically, under the currently effective factors, residential voice telephony over the ILECs' networks continues to saddle a substantial portion of the cost of the networks. With all these new services, the cost of voice telephony should be decreasing, and so should the retail price. Instead, the price of voice telephony continues to increase, even in ostensibly low-cost urban areas.⁸

The State Members of the Federal-State Joint Board on Separations have indicated their support for a freeze until 2017 if the FCC says that states are free to open their own separations proceedings.⁹ NASUCA has been supportive of such state action for many years.¹⁰ An

Loube is accessible at <http://apps.fcc.gov/ecfs/document/view?id=6518439163>. NASUCA had also filed substantive comments on separation policy in 2003. <http://apps.fcc.gov/ecfs/document/view?id=6515682225>, and on 2002 <http://apps.fcc.gov/ecfs/document/view?id=6513182074>.

⁵ FNPRM, ¶ 8.

⁶ See <http://apps.fcc.gov/ecfs/document/view?id=7020911981>.

⁷ FNPRM, n.4.

⁸ See http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0320/DA-14-384A1.pdf.

⁹ See <http://apps.fcc.gov/ecfs/document/view?id=7521096313>.

affirmative declaration from the FCC may be helpful, or necessary in some states, to accomplish the federal end.

The continuing harm to consumers from the market-distorting cost assumptions embodied in the current frozen factors – that NASUCA estimated at \$2-6 billion per year in 2006¹¹ – is clear. And as an example of what can be done when the separations factors are updated, recent testimony by Dr. Robert Loube in Maine (sponsored by the NASUCA member there) showed that rather than a \$60 million increase, FairPoint needed no rate increase from telephone services.¹²

On the federal level, changes to the factors would be treated as exogenous changes by price cap carriers, and also addressed for rate-of-return carriers. Further, updated separations factors would undoubtedly alter the Urban Rate Floor (“URF”),¹³ and reduce the need for rural carriers to increase rates to meet an artificially-heightened floor.¹⁴

As for the FCC’s proposal for a filing window for rural ILEC requests to change their factors, the current practice is for carriers to come in for changes when they deem appropriate, i.e., when the situation has changed enough to render the frozen factors significantly disadvantageous. This system – where the ILEC must view the changes as beneficial in order to apply – is significantly one-sided. On the other hand, if changes in the environment are what drives the need to change factors, then a one-time window makes little sense.

Lest anyone say that this should be ancient history, it simply cannot be forgotten that the bases that underlie current (increased and increasing) rates were established well before

¹⁰ 2006 Joint Comments at 6.

¹¹ Comments of NASUCA and Rate Counsel (March 23, 2011), at 2-4.

¹² See <https://mpuc-cms.maine.gov/CQM.Public.WebUI/images/pdf.gif>.

¹³ See footnote 8, supra.

¹⁴ It appears the Commission intends to address this problem. See http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0409/DOC-326517A1.pdf.

broadband access, the Internet and the World Wide Web were significant. Perhaps that is why the Commission (again) seems to be making only a perfunctory effort to get public comment.¹⁵ NASUCA submits (again) that extending the freeze, without actual action to solve the underlying separations issues, is not in the public interest.

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¹⁵ Witness the mere fourteen days for initial comments, and, worse, only seven days for reply comment. The Commission says there is a “need for expediency” because the current freeze ends July 1, 2014. FNPRM, ¶ 2. Why not get started earlier?