

**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**

Only a few commenters responded to the March 27, 2014 Further Notice of Proposed Rulemaking (“FNPRM”) in this docket. The National Association of State Utility Consumer Advocates (“NASUCA”) did, continuing long-time protests against a regime that harms consumers.¹ The comments, including NASUCA’s, were relatively brief.

In the FNPRM, the Federal Communications Commission (“FCC” or “Commission”) proposed to continue the separations freeze that has been in place since 2001 for three more years, through June 30, 2017.² The industry comments supported the continued freeze.³ The FCC also asked for comment on a proposal to allow rural LECs a filing window to “unfreeze” their separations.⁴ The industry comments also supported that proposal.⁵

¹ See NASUCA Comments at 1, n.4.

² FNPRM, FCC 14-27 (rel. March 27, 2014).

³ Although Pioneer Telephone Cooperative, Inc. complained about the length of the freeze, based on its March 22, 2013 unfreeze Petition, while the Small Company Coalition (at 2) proposed extending the freeze even further – until July 1, 2020.

⁴ FNPRM, ¶ 1.

On behalf of consumers, NASUCA still is not convinced. The Commission cannot continue to simply ignore this issue in the hopes that it will just go away. As NASUCA explained, the pricing structures of the market-dominant incumbents are based on a by-now-antique set of assumptions⁶ on the uses and costs of networks that had not yet transitioned to IP. Until those assumptions are updated, and the cost structure of the transitioned networks is recognized, prices will be distorted, and consumers and competition will be harmed.

The National Exchange Carrier Association, et al. (“NECA, et al.”) support the freeze during the period that the Commission implements and reforms the universal service fund and intercarrier compensation.⁷ But reforming USF and ICC without addressing the underlying cost issues is building on a very shaky foundation.

Reasonable reforms of Part 36 would lead to a substantial transformation of jurisdictional returns, moderating current extremely high reported interstate returns and increasing intrastate returns to more-reasonable levels. An example of such reasonable reforms is contained in the Maine testimony of Dr. Robert Loube cited in NASUCA’s initial comments.⁸

NASUCA had noted the support of the State Members of the Federal-State Joint Board on Separations for a freeze until 2017 if the FCC says that states are free to open their own separations proceedings.⁹ GVNW correctly points out that this would be “retaining” an existing capability, but asks the FCC to explicitly ensure that any costs that are shifted to the interstate

⁵ GVNW notes that this “unfreezing” may require adjustments to the eligible recovery base interstate traffic sensitive cost recovery. GVNW Comments at 3. This only emphasizes the one-sided nature of allowing companies to opt out of the freeze. See NASUCA Comments at 3. Indeed, NECA, et al. would allow carriers to “refreeze” after the thaw. NECA, et al. Comments at 2.

⁶ See CenturyLink Comments at 1.

⁷ NECA, et al. Comments at 1-2. This is the Small Company Coalition’s rationale (at 2) for seeking to extend the freeze (while allowing carriers to opt out of the freeze).

⁸ NASUCA Comments at 3, citing Maine PUC Docket 2013-00340.

⁹ NASUCA Comments at -2-3, citing March 31, 2014 letter from State Chair John Burke; see <http://apps.fcc.gov/ecfs/document/view?id=7521096313>.

jurisdiction are recoverable.¹⁰ Carriers should not be given such a Joint Federal-State guarantee; there is no such guarantee now that all of a carrier's costs will be recoverable.

CenturyLink asserts that the separations process will become “wholly unnecessary” as competition increases “and more services are appropriately deregulated...”¹¹ The appropriate level of deregulation is a matter of strong debate (unless you are a large multi-state ILEC like CenturyLink), but at the very least, there should be a true-up to update the accounting of the 1990s to the network of the 2010s. Further, the “enduring social values” that the Commission has discussed do not allow the level of deregulation posited by CenturyLink.

In conclusion, the freeze should not be extended. The Commission's expressed need for expedition¹² aside, and taking into account the possible impacts of unfreezing on telecom companies,¹³ it is time for the Commission to bite the bullet and transition to costing that reflects the costs and uses of the new network. This should not be déjà vu all over again.¹⁴

Respectfully submitted,

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¹⁰ GVNW Comments at 2-32.

¹¹ CenturyLink Comments at 1-2.

¹² See NASUCA Comments at 4.

¹³ See Small Company Coalition Comments at 3. Notably, the Small Company Coalition was the only one to complain about these impacts.

¹⁴ See http://en.wikipedia.org/wiki/Yogi_Berra.