Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.

The Commission has requested comment on a proposal to extend the current "freeze" of Part 36 category relationships and jurisdictional cost allocation factors for a fifteen-year period, as well as a proposal to allow rate-of-return incumbent local exchange carriers (RLECs) who elected to freeze their categorizations the opportunity to unfreeze those relationships.[1]

The National Exchange Carrier Association, Inc. (NECA) strongly supports the proposed fifteen-year extension, and further supports allowing RLECs the opportunity to unfreeze category relationships. As discussed below, RLECs who participate in NECA's traffic sensitive pool should be required to notify NECA of their decision to opt out of the categorization freeze by March 1 of any year such elections are allowed, so that NECA can take resulting revenue requirement changes into account when preparing its annual access tariff filings.

[1] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking, FCC 18-99 (rel. July 18, 2018) (*FNPRM*).

I. BACKGROUND

The Commission initially froze its jurisdictional separations rules in 2001 and has repeatedly extended the separations freeze since then.[2] Past extensions have been based on the expectation that the Federal-State Joint Board on Separations would soon be able to develop a recommendation regarding comprehensive reform of the separations rules.[3] As the *FNPRM* explains, however, such a recommendation is not likely to be made in the near future.[4] The Commission accordingly proposes to extend the freeze for 15 years.

In support, the *FNPRM* explains how the jurisdictional separations process has diminished in importance due to changes in various Commission rules applicable to ILEC tariffing and support programs.[5] According to the *FNPRM*, rate-of-return carriers now primarily use separations cost results only to establish their business data services (BDS, or special access) rates, to calculate interstate common line support for those carriers not receiving support under the Commission's Alternative Cost Accounting Model (A-CAM), and to calculate subscriber line charge (SLC) levels of carriers with SLCs below capped levels.[6] The Commission notes that it has recently released an NPRM that seeks comment on migrating additional RoR carriers to model-based support and an NPRM proposing to allow A-CAM carriers to transition their BDS offerings from rate-of-return to incentive-based regulation.[7]

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[2] *Id.* ¶¶ 2-9, 13, n. 32.

[3] *Id.* ¶ 2.

[4] *Id.* ¶ 17.

[5] *Id.* ¶¶ 1, 10-12.

[6] *Id.* ¶ 11.

[7] *Id.* ¶ 12.

According to the Commission, actions in these proceedings may further reduce the need for carriers to perform jurisdictional separations studies.

The *FNPRM* also proposes to allow rate-of-return carriers that elected to freeze their category relationships in 2001 to opt out of that freeze.[8] The *FNPRM* requests comment on the timing for carriers to opt out of the categorization freeze and whether carriers should be permitted to re-freeze their categorizations again after updating them.[9]

II. THE FREEZE SHOULD BE EXTENDED FOR FIFTEEN YEARS AS PROPOSED IN THE *FNPRM*.

NECA and the rural associations have previously explained the importance of maintaining the current separations freeze pending comprehensive separations reform.[10] The freeze was originally intended to provide stability and regulatory certainty for incumbent local exchange carriers (ILECs) at a time when they faced changes in the telecommunications marketplace not considered when the separations rules were promulgated. In 2001, these changes included growth in local competition and the advent of dial-up internet access services, which were strongly affecting interstate usage results and associated separations factors.[11] The freeze also significantly reduced regulatory burdens associated with performing extensive annual separations studies.[12]

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[8] *Id.* ¶¶ 23-32.

[9] *Id.* ¶¶ 33-39.

[10] *See e.g.*, Comments of NECA, CC Docket No. 80-286 (filed Apr. 17, 2017) (*2017 NECA Comments*); Comments of NECA, *et al*. (filed Apr. 16, 2014) (*2014 Association Comments*).

[11] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd. 11382 (2001) ¶ 12.

[12] *Id*. ¶ 13.

In more recent freeze extension proceedings, commenters noted the impacts of the Commission's 2011 *Transformation Order,* which substantially changed the relationships between costs as determined by separations studies and switched access rates and offsetting CAF-ICC support.[13] The Commission's subsequent 2016 *Rate of Return Reform Order*[14] provided certain RLECs with the option to receive high-cost universal service support based on the Alternative-Connect America Cost Model (A-CAM), which further reduced the need for carriers to perform cost studies.[15] That Order also reformed the Commission's Interstate Common Line Support (ICLS) mechanism, creating in its place a new Connect America Fund - Broadband Loop Support (CAF-BLS) program. This new broadband-focused mechanism has the potential to profoundly change the way that rural consumers obtain voice and data services, as they increasingly transition to broadband in place of traditional regulated voice and data services.

While the speed and depth of the rural broadband transition remains unclear, there is little doubt that the transition to broadband-only networks and wholly-interstate internet services will profoundly impact traditional jurisdictional separations. In this ongoing transitional environment, it makes little sense to reinstate traditional separations studies. Allowing the freeze to expire at this point would also impose substantial burdens on companies that remain subject to the Commission's separations rules. After 18 years of not performing

[13] *2017 NECA Comments* at 3; *2014 Association Comments* at 3-4.

[14] *Connect America Fund*, WC Docket No. 10-90, *ETC Annual Reports and Certifications*, WC Docket No. 14-58, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01- 92, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 3087 (2016) (*Rate of Return Reform Order*).

[15] *See id.* ¶¶ 17-79; *see also Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 13775 (2016).

such studies, it is highly questionable whether small companies would be able to gain access to internal or external personnel with the expertise needed to perform annual cost studies at this point.

Moreover, pre-2001 separations procedures would likely need to be substantially revised to comply with revisions to the Commission's rules that have occurred since the freeze was imposed.[16] Removal of the current freeze would necessitate specialized training and reassignment of personnel to these tasks, resources that might better be utilized in upgrading networks and providing service to consumers. For all these reasons, NECA agrees the Commission should freeze the separations rules for a full fifteen years, as proposed in the *FNPRM*, and allow adequate time for the various regulatory reforms undertaken by the Commission in recent years to become fully realized.

III. THE COMMISSION SHOULD PROVIDE RLECs AN OPPORTUNITY TO UNFREEZE CATEGORIZATION FACTORS.

NECA also supports allowing RLECs with frozen categorization factors an opportunity to unfreeze those factors going forward. As the *FNPRM* notes, carrier investments since 2000 have generally become more weighted toward BDS and away from switched access and common line categories.[17] This shift is not reflected in accounts with "frozen" categorizations, which in turn tends to distort revenue requirements and resulting rates.

The *FNPRM* requests comment on how the categorization freeze impacts rates and whether carriers would benefit from being allowed to opt out of the freeze.[18] Because NECA

[16] *See 2014 Association Comments* at 3.

[17] *FNPRM* ¶ 25.

[18] *Id.*

does not have access to updated data for specific companies subject to the freeze, it is difficult to make precise determinations as to how unfreezing categorizations will affect individual company revenue requirements and resulting rates. As a general matter, however, the Commission can expect that unfreezing categorizations will tend to place upward pressure on rates for BDS. These impacts may be mitigated by companies who transition costs from interexchange plant to subscriber plant or whose BDS plant is relatively small in comparison to their subscriber plant.

The Commission also correctly notes that unfreezing categorization factors may in some cases cause carriers to double-recover costs through rates and CAF-ICC support.[19] As the *FNPRM* suggests, however, this issue can be addressed by requiring carriers that opt out of the category relationships freeze to recalculate their base period revenue (BPR) amounts using unfrozen category relationships (based on 2011 data) and filing the resulting revised interstate switched access revenue requirement with the Commission.[20] Because rates cannot be set retroactively, any resulting changes to CAF ICC support amounts should be on a prospective basis only, corresponding with adjusted switched access rates.

Finally, the *FNPRM* requests comments on whether carriers should be allowed single or multiple opportunities to unfreeze their frozen category relationships, and if so, how conforming changes should be made to carrier tariffs.[21] Regardless of whether carriers are given a single or

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[19] *Id*. ¶ 28.

[20] *Id*. ¶ 29. This approach would be preferable to alternatives, such as requiring carriers to report excess amounts as Double Recovery for CAF ICC calculations. If pooling carriers elected this alternative and later elected to exit the NECA pools (without adjusting baseline data), their resulting individual switched access rates based on section 51.909(a)(4) will not correctly reflect updated category relationships.

[21] *FNPRM* ¶ 32.

multiple opportunities to unfreeze category relationships, NECA suggests that pooling carriers be required to provide notice to NECA by March 1 of any year in which such changes are to take effect, as the *FNPRM* appears to suggest. For example, pooling carriers seeking to unfreeze category relationships as of July 1, 2019 should be required to provide notice of such changes to NECA on March 1, 2019, giving both carriers and NECA adequate time to prepare and file conforming tariff revisions.[22] In addition, once a company has chosen to freeze or unfreeze their category relationships, the Commission may wish to require companies to maintain such elections for specific periods (absent a waiver) to avoid potential concerns about gaming.

IV. CONCLUSION

NECA supports the Commission's proposal to extend the current separations freeze for an additional fifteen-year period, as doing so will allow adequate time for the impacts of critical reforms to the Commission's ICC and USF rules to become fully implemented and for their effects on the traditional telecommunications services marketplace to become known. NECA also supports allowing RLECs who elected to freeze their category

[22] Any required method for revising switched access rates should not preclude NECA from using its normal rate band assignment process to assign companies unfreezing categories to a different appropriate switched access rate band, *i.e.*, NECA should be able to assign pooling companies to banded rates using existing methodologies.

relationships an opportunity to unfreeze them, with an effective date of July 1 in any year such changes are permitted to occur.

Respectfully submitted,

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