

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES AND
THE NEW JERSEY DIVISION OF RATE COUNSEL**

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I. INTRODUCTION

On March 1, 2011, the Federal Communications Commission (“FCC” or “Commission”) released a notice of proposed rulemaking seeking comment on extending, until June 30, 2012, the current freeze of Part 36 category relationships and jurisdictional cost allocation factors.¹ Pursuant to the FCC’s comment cycle,² the National Association of State Utility Consumer Advocates (“NASUCA”) as an organization³ and the New Jersey Division of Rate Counsel (“Rate Counsel”) as an agency representing New Jersey consumers and as a member of NASUCA,⁴ submit these comments, which oppose such an extension.

NASUCA and Rate Counsel oppose the further extension of the separations freeze for the numerous and detailed reasons set forth in various earlier pleadings (which are

¹ *Federal-State Joint Board on Jurisdictional Separations*, CC Docket No. 80-286, Notice of Proposed Rulemaking, FCC 11-34 (rel. March 1, 2011) (*Notice*).

² “Comment Cycle Established for Notice of Proposed Rulemaking Regarding Separations Freeze Extension,” CC Docket No. 80-286, DA 11-517 (rel. March 17, 2011). Reply comments are due April 4, 2011. *Id.*

³NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

⁴Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities. The Rate Counsel, formerly known as the New Jersey Ratepayer Advocate, is a Division within the Department of the Public Advocate. N.J.S.A. §§ 52:27EE-1 *et seq.*

incorporated herein by reference),⁵ and which NASUCA and Rate Counsel discussed further during a meeting of the Federal-State Joint Board on Jurisdictional Separations.⁶ These comments do not repeat the previous analyses of the separations freeze undertaken by NASUCA and Rate Counsel, nor do they repeat earlier explanations of why such an extension is not in the public interest because the circumstances are virtually the same, with delay in reform harming consumers and the industry and prejudicing policy makers.

Despite all efforts to the contrary, the FCC is in a position now that is virtually identical to its position a year ago when the FCC similarly sought comment on extending its “interim” separations freeze.⁷ It is not necessary to extend the separations freeze yet again – there is an interim proposal pending before the FCC – on which comment has been received – that could and should be adopted, pending more comprehensive separations reform.

On March 5, 2010, the State Members of the Federal-State Joint Board on Separations (“State Members”) submitted a proposal for interim adjustments to the

⁵ NASUCA and Rate Counsel submitted initial and reply comments on April 19 and April 26, 2010, respectively, opposing last year’s proposal to extend the freeze until June 30, 2011, and also submitted initial and reply comments on April 29, and June 1, 2010, in support of the State Members’ Proposal discussed below. NASUCA and Rate Counsel also filed comments in 2009 regarding the FCC’s proposed extension of the separations freeze. See also Comments of the National Association of State Utility Consumer Advocates, the New Jersey Division of Rate Counsel and the Maine Office of the Public Advocate; and Affidavits of Susan Baldwin and Dr. Robert Loube (August 22, 2006); *id.*, NASUCA et al. Reply Comments.

⁶ Meeting of the Federal-State Joint Board on Jurisdictional Separations, September 24, 2010, “Improving the Separations Process: Consumer Impact,” presentation by Susan M. Baldwin, on behalf of NASUCA and Rate Counsel.

⁷ *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286 (“80-286”), FCC 10-47, Notice of Proposed Rulemaking (rel. March 29, 2010).

jurisdictional separations factors (“State Members’ Interim Proposal”)⁸ to be implemented prior to the possible extension of the separations freeze beyond June 30, 2010, and, subsequently, the Federal-State Joint Board on Separations (“Joint Board”) sought comment on the State Members’ Interim Proposal.⁹

NASUCA and Rate Counsel observed the following last year:

As a result of the State Members’ Proposal, the FCC now has the opportunity to adopt an alternative approach rather than to merely repeat yet again the extension of the now nearly decade-old separations freeze. ... Interim relief and permanent relief are long overdue given that current separations are imbalanced to the tune of **\$2-6 billion against ... ratepayers.**

NASUCA and Rate Counsel welcome the well-considered proposal by the State Members to address the extreme distortions that now exist in the “stale system,” which, as State Members explain, “no longer adequately represents a just and reasonable allocation of costs between the jurisdictions.” ... Prolonging the economically inefficient and grossly unfair separations process will have dire consequences: state regulators will confront misleading data about the status of carriers’ intrastate earnings; consumers will unfairly bear the burden of the cost of interstate services and of unregulated services; and competitors will be disadvantaged by carriers’ unchecked ability to subsidize competitive ventures with noncompetitive services (which now bear a disproportionate share of the cost of common plant and operations).

NASUCA and Rate Counsel acknowledge that there is no “perfect” fix to the present, flawed separations process. As aptly observed by State Members, “a reasonable approach should not be delayed by efforts to find

⁸ Letter from Steve Kolbeck, State Chairman, Federal-State Joint Board on Jurisdictional Separations, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 80-286 (March 5, 2010).

⁹ FCC Public Notice FCC 10J-1, “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,” released March 30, 2010.

a perfect approach.” ...[T]he State Members’ Proposal provides a reasonable approach, and therefore should be adopted before July 1, 2010.¹⁰

NASUCA and Rate Counsel acknowledge that this year, State Members support the FCC’s proposed further extension of the separations freeze, but observe that such support continues to be tempered by State Members’ continuing commitment to (and seemingly unabated hope for) separations reform. Among other things, State Members state:

Our dedication to separations reform is based on our belief that such reform is long overdue. The continual extension of a freeze that was put into effect in 2001 only serves to increase the likelihood that the current allocations to the interstate and intrastate jurisdictions are not reasonable, a serious concern. If left uncorrected, it can only induce significant distortions into both FCC/State policies and carrier pricing decisions. To achieve some reform by the proposed June 30, 2012 deadline, we strongly urge the Joint Board and the FCC to immediately begin discussions on how best to accomplish this goal.¹¹

Last year NASUCA and Rate Counsel also stated:

In 2001, the Commission froze the separations factors at then-current levels. The current NPRM is the fourth seeking comment on extending the jurisdictional separations freeze. The current freeze is due to expire on June 30, 2010. Given the Commission’s timing, practically speaking, extending the separations freeze is probably the only course of action that makes sense. NASUCA and Rate Counsel therefore reluctantly recommend that the Commission order yet another extension of the freeze on jurisdictional separations, with the “new” freeze expiring June 30, 2011, as suggested in the NPRM. Once again, NASUCA and Rate Counsel urge the Commission to commit to this being the last extension and to put forth the effort necessary to reform its jurisdictional separations

¹⁰ Comments of NASUCA and Rate Counsel on the Interim Proposals of the State Joint Members, at 2-4 (emphasis in original), citing 80-286, Reply Comments of the National Association of State Utility Consumer Advocates, the New Jersey Division of Rate Counsel and the Maine Office of the Public Advocate, (November 20, 2006), at 48 and State Members’ Interim Proposal, at 1, 9.

¹¹ Comments of the Federal-State Joint Board on Separations, March 18, 2011, at 2.

as discussed in the next section. After more than a decade of inaction, in an industry that has changed as drastically as the telecommunications industry, the FCC must accomplish the major reforms needed.¹²

Unfortunately these same concerns are now more relevant than ever, as the FCC seeks to extend the freeze *a fifth time*. NASUCA and Rate Counsel respectfully disagree with State Members' expectations that somehow five times is the charm and the FCC will now focus on the State Members' Proposal before the next "separations cycle." Industry members have had ample opportunity to propose remedies to any operational or technical glitches that they may contend would be associated with the implementation of the State Members' Proposal. The time for naysaying is long past – industry's time would be better spent proposing specific "tweaks" to the State Members Proposal.

The FCC should adopt State Members Proposal by July 1, 2011, and subsequently should implement long-overdue broad separations reform. Separations reform is integral to the FCC's pending reform of intercarrier compensation, universal service and broadband policy.¹³ The FCC's pending investigation of these issues should explicitly include an analysis and correction of the presently flawed separations system because the

¹² NASUCA and Rate Counsel initial comments, April 19, 2010, at 3.

¹³ *In the Matter of Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking* (rel. February 9, 2011).

way that carriers separate their costs directly affects issues (such as revenue recovery) that the FCC is now examining.¹⁴

II. CONCLUSION

State Members' Interim Proposal will improve the accuracy of the apportionment of regulated costs between the intrastate and interstate jurisdictions. Furthermore, carriers could implement the State Members' Interim Proposal without confronting significant implementation or operational issues, and within the necessary time frame to avoid a further extension of the separations freeze. NASUCA and Rate Counsel urge the Commission to adopt the State Members' Interim Proposal and to defer more comprehensive reform until after July 1, 2011. After July 1, 2011, NASUCA and Rate Counsel welcome the opportunity to participate in longer term reform and to address the relationship of separations reform to intercarrier compensation, universal service, and broadband policy.

Respectfully submitted,

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