

**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.)

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

I. INTRODUCTION

The National Association of State Utility Consumer Advocates (“NASUCA”) hereby replies to the comments filed in response to the Notice of Proposed Rulemaking (“NPRM”) released March 27, 2009 in this docket. In the NPRM, the Federal Communications Commission (“FCC” or “Commission”) sought comment on extending until June 30, 2010 the current freeze of Part 36 category relationships and jurisdictional cost allocation factors.¹ As described in the NPRM, the jurisdictional separations process “is the process by which incumbent local exchange carriers (LECs) apportion regulated costs between the intrastate and interstate jurisdictions.”²

¹ *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286 (“80-286”), FCC 09-24, Notice of Proposed Rulemaking (rel. March 27, 2009) (“NPRM”).

² NPRM, ¶ 2.

Only 14 comments were filed, including those of NASUCA.³ None of the comments opposed extending the separations freeze by another year. As noted in a number of the comments, given the little time remaining until June 30, 2009, there is no real alternative.

NASUCA said that the extension should be accompanied by a firm commitment to address these issues, with a comprehensive resolution to separations issues coming before the expiration of the (once again) extended freeze.⁴ NASUCA noted the “significant importance to the ratepayers that NASUCA represents, given that current separations are imbalanced to the tune of **\$2-6 billion against those ratepayers.**”⁵ The State Members are in accord, stating

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.⁶

And the Staff of the Virginia Commission states that it is concerned that the current

³ Comments on the separations freeze were filed by Alexicon Telecommunications Consulting (“Alexicon”); the Coalition for Equity in Switching Support (“CESS”); Embarq; Gila River Telecommunications, Inc. (GRTI). Mid-Communications, Inc., dba HickoryTech (“Mid-Com”); NECA, NTCA, OPASTCO, ERTA and WTA (“NECA, et al.”); New Jersey Division of Rate Counsel (“NJ Rate Counsel”); Qwest Communications, Inc. (“Qwest”); State Members of the Federal-State Joint Board on Jurisdictional Separations (“State Members”); TCA; Texas Statewide Telephone Cooperative, Inc.; United States Telecom Association (“USTelecom”); Virginia State Corporations Commission Staff (“Staff of the Virginia Commission”).

⁴ NASUCA Comments at 2. See State Members Comments at 1;

⁵ State Members Comments at 1, 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) (“NASUCA et al. Reply Comments”) at 48. See also NJ Rate Counsel Comments at 2-3.

⁶ State Members Comments at 2.

separations freeze has resulted in [incumbent local exchange carriers] ILECs including non-regulated costs with regulated costs and misaligning costs between jurisdictions. This has very likely led to various costing and pricing problems at both the state and federal levels.⁷

By contrast, USTelecom states,

The current system of jurisdictional separations is increasingly irrelevant in today's world of converged, any-distance communications services and applies only to a small subset of all regulated lines. Any attempt to fix the separations system will only make matters worse in the short term and prove unnecessary in the long term.⁸

Embarq asserts that both the Commission and the Joint Board “recognized a decade ago that separations requirements are obsolete.”⁹ Yet the sources cited by Embarq show, to the contrary, that both the Commission and the Joint Board recognized that the then-current separations **factors** had been rendered obsolete, due to the changes in the industry. Further changes since the first freeze have only increased the need for reform of the factors, so that both interstate and intrastate rates can be set based on a proper and reasonable allocation between the jurisdictions.¹⁰

Embarq states that incumbents “cannot increase rates without losing customers to one of several competitors.”¹¹ Apparently, ILECs across the country have a death wish, because they are increasing their intrastate rates right and left, with little if any sign that they are lowering intrastate rates to meet or beat the competition. Embarq's and

⁷ Staff of the Virginia Commission Comments at 1.

⁸ USTelecom Comments at 1.

⁹ Embarq Comments at 3.

¹⁰ Thus Embarq's arguments that the separations process is unnecessary (id. at 9-13) are completely wrong.

¹¹ Id. at 12.

USTelecom’s statements are clearly made from the perspective of the companies that benefit from the current misallocations.

A similar perspective comes from Qwest, which both supports comprehensive separations reform¹² and declares its exemption from the whole process.¹³ This latter position only underscores the importance of NASUCA’s appeal of the Commission’s grant of forbearance to Qwest – and to AT&T and to Verizon¹⁴ – of the erroneous exemption of these companies from cost allocation.¹⁵

Some of the commenters plead their special case for changes to one of the Commission’s rules,¹⁶ that will provide them with additional universal service support. Other comments address other specific changes to separations rules.¹⁷ The merits of these requests need not be resolved in extending the freeze. The requests should be addressed, if at all, as part of comprehensive separations reform.

Embarq says that the freeze should be extended by three years, and that the Commission should “prevent states from imposing any new or different cost allocation requirements.”¹⁸ Both extending the freeze for that period, and preempting state setting of

¹² Qwest Comments at 1; see also Embarq Comments at 13-17.

¹³ Id. at 1-2.

¹⁴ Notably, neither AT&T nor Verizon filed comments on continuing the separations freeze.

¹⁵ *NASUCA v FCC*, D.C. Cir. consol. Case No. 08-1226 and 08-1253.

¹⁶ CESS Comments at 2, citing its Petition to the Commission; Mid-Com Comments at 2; NECA, et al. Comments at 7-11. GRTI Comments at 1, citing its Petition. Mid-Com also filed comments in specific support of the CESS Petition, as did Public Service Commission of South Carolina, and GVNW Consulting, Inc. .

¹⁷ Alexicon Comments at 4-5; TCA Comments at 5.

¹⁸ Embarq Comments at 8.

allocations -- even if the Commission had the power to do so, and Embarq cites no authority for its proposal -- would only exacerbate the current misallocation of costs.

Finally, NECA, et al. assert that, rather than extending the separations freeze by one year, the Commission should provide that “ the freeze extension will extend for a period not to exceed one year following issuance of Commission orders reforming existing intercarrier compensation (ICC) and high-cost universal service fund (USF) support rules.”¹⁹ This has it pretty much backwards: The appropriate levels for ICC – as to which the FCC’s jurisdiction does not include intrastate access – and USF – which should be based on appropriate levels of local rates – are dependent on proper separations between jurisdictions, not the other way around. Separations need to be determined first.

For the reasons set forth in NASUCA’s initial comments and herein, the Commission should extend the separations freeze for one more year. But the Commission must also make a firm commitment to resolving the nagging, multi-billion dollar issues raised under the separations factors that have been in effect for more than ten years under the current freeze.

¹⁹ NECA, et al. Comments at 1; see also TCA Comments at 1.

Respectfully submitted,

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