

**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. )

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

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**I. INTRODUCTION**

In the Notice of Proposed Rulemaking (“NPRM”) released March 29, 2010 in this docket, the Federal Communications Commission (“FCC” or “Commission”) sought comment once again on extending the current freeze of Part 36 category relationships and jurisdictional cost allocation factors.<sup>1</sup>

The National Association of State Utility Consumer Advocates (“NASUCA”) and the New Jersey Division of Rate Counsel (“Rate Counsel”) filed brief comments to address the issues raised by the NPRM, which are of significant importance to the ratepayers that NASUCA and Rate Counsel represent, given that current separations are imbalanced to the tune of **\$2-6 billion against those ratepayers.**<sup>2</sup> The NASUCA/Rate Counsel comments first suggested that the proposals of the state members of the Federal-

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<sup>1</sup> *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). The jurisdictional separations process “is the process by which incumbent local exchange carriers (LECs) apportion regulated costs between the intrastate and interstate jurisdictions.” NPRM, ¶ 2.

<sup>2</sup> 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.

State Joint Board on Separations for interim action on the separations factors should be adopted. NASUCA and Rate Counsel also proposed that if the FCC extends the separations freeze for another year, such extension should be explicitly found to be an exogenous event that triggers review under both state and federal price cap plans, and that the FCC should find it in the public interest to permit state commissions to file for a waiver of compliance with the separation freeze in setting intrastate rates, with such waiver filings handled on an expedited basis. NASUCA and Rate Counsel also proposed re-imposing Automated Reporting Management Information System (“ARMIS”) reporting requirements as a condition of continuing the freeze.

Failing these actions, the Commission should commit to this being the last extension and to put forth the effort necessary to reform its jurisdictional separations as discussed in the next section. As NASUCA and Rate Counsel stated, “After more than a decade of regulatory inaction, in an industry that has changed as drastically as the telecommunications industry, the FCC must accomplish the major reforms needed.”<sup>3</sup>

Only a few comments were filed on the proposed one-year continuation of the freeze.<sup>4</sup> None of the comments opposed continuing the freeze. Commenters noted the practical difficulties that would result from a failure to renew the freeze, given the various companies’ practice of letting go employees experienced in the separations

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<sup>3</sup> NASUCA/Rate Counsel Comments at 5.

<sup>4</sup> Comments were filed by Alexicon Telecommunications Consulting (“Alexicon”); CenturyLink; Cincinnati Bell Telephone Company LLC (“CBT”); Coalition for Equity in Switching Support (“CESS”); Gila River Telecommunications, Inc. (“GRTI”); GVNW Consulting, Inc. (“GVNW”); Independent Telephone & Telecommunications Alliance (“ITTA”); National Exchange Carrier Association, et al. (“NECA, et al.”); Qwest Corporation (“Qwest”); Texas Statewide Telephone Cooperative, Inc. (“TSTCI”); and United States Telecom Association (“USTelecom”).

process in the face of the Commission's continued inaction.<sup>5</sup>

Some of the commenters proposed either an explicitly indefinite freeze<sup>6</sup> (in contrast to the current de facto indefinite freeze) or a freeze that would end one year after the Commission rules on separations issues.<sup>7</sup> NASUCA suggests that either of these choices would unreasonably once again place these issues on the back burner.

USTelecom suggests that the back burner is where the issues belong, given that the Commission has granted forbearance on separations accounting to the largest carriers.<sup>8</sup> USTelecom overlooks the fact that those forbearance orders are on appeal (by NASUCA)<sup>9</sup> and will likely eventually be found to have been unlawful. Here again, the Commission has been allowed to delay consideration of the appeals because of the pendency of (and its inaction on) petitions for reconsideration of the orders in question.

USTelecom also says that "jurisdictional separations is increasingly irrelevant..."<sup>10</sup> This ignores the fact that both the intrastate rates and the interstate rates that are being used in this new competitive market are based on the ancient separations factors that the Commission has allowed to continue for more than a decade. A re-initialization of these rates (including the price-capped interstate rates<sup>11</sup>) would allow competition – intrastate and interstate – to proceed from a more accurate point... as if the

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<sup>5</sup> CBT Comments at [1]; CenturyLink Comments at 10; ITTA Comments at 2; NECA, et al. Comments at 3; TSTCI Comments at [2-3].

<sup>6</sup> CBT Comments at [2]; USTelecom Comments at 1.

<sup>7</sup> CenturyLink and GVNW also propose a three-year freeze. CenturyLink Comments at 1; GVNW Comments at 3.

<sup>8</sup> USTelecom Comments at 2.

<sup>9</sup> *NASUCA v. FCC*, D.C. Cir. Case No. 08-1226; *NASUCA v. FCC*, D.C. Cir. Case No. 08-1353.

<sup>10</sup> USTelecom Comments at 1; see also CenturyLink Comments at 3.

market had been competitive all along.<sup>12</sup>

Some of the commenters suggest that action on separations depends on the Commission's action on universal service and intercarrier compensation.<sup>13</sup> These views ignore the fact that separations, intercarrier compensation and universal service are inextricably linked; they all three should be decided together. Indeed, it might make more sense to decide how interstate and intrastate costs and revenues should be separated **first**, and then decide how much compensation among carriers is needed to pay for the interstate and intrastate portions of the networks, and then finally decide – under the resulting separations factors and intercarrier revenues – how much federal support is necessary to ensure that rural local rates are affordable and reasonably comparable to urban local rates.<sup>14</sup>

Finally, despite their support for a continuation of the separations freeze, some of the carriers push selective changes that they would be allowed to opt in to, if the changes would be to their financial advantage.<sup>15</sup> Carriers should not be allowed to game the system in this way.<sup>16</sup>

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<sup>11</sup> USTelecom Comments at 5-6.

<sup>12</sup> See CenturyLink Comments at 8. And despite the supposedly rampant competition for telephone service (USTelecom Comments at 3-5), the practically uniform impact of intrastate rate deregulation has been rate **increases**, exactly the opposite of what one would expect 1) in the face of true competition and/or 2) in the face of increasingly interstate use of the network. See *id.* at 5.

<sup>13</sup> ITTA Comments at 2; NECA, et al. Comments at 2; Qwest Comments at 3; TSTCI Comments at [2]; USTelecom Comments at 7.

<sup>14</sup> Indeed, also to decide how much federal support is needed to ensure that broadband services are available to all Americans.

<sup>15</sup> This can be distinguished from the interim changes proposed by the state members of the Federal-State Joint Board, which would apply to all carriers rather than being a matter of carrier choice.

<sup>16</sup> See Alexicon Comments at 3-4; GRTI Comments; GVNW Comments at 3-4; NECA, et al. Comments at 5-7; TSTCI Comments at [3]. CECS seeks to perpetuate the concessions it already received.

Respectfully submitted,

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April 26, 2010