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
UNITED STATES TELECOM ASSOCIATION

Pursuant to the Further Notice of Proposed Rulemaking (FNPRM) adopted in this docket,[1] the United States Telecom Association (USTelecom)[2] respectfully submits these comments in support, in part, of the proposal to extend the freeze of jurisdictional separations category relationships and cost allocation factors for rate-of-return incumbent local exchange carriers (ILECs) while the Commission continues to work with the Federal-State Joint Board on Jurisdictional Separations (Joint Board) to overhaul separations rules.[3] USTelecom supports an 18 month extension of the current freeze that originated in 2001[4] so that there is adequate time

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[1] *See In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking, FCC 17-22 (Mar. 20, 2017) (*FNPRM*).

[2] USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.

[3] *See FNPRM* at 1.

[4] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382, 11387–88, para. 9. (2001) (*2001 Separations Freeze Order*). Category relationships are the percentages of a carrier's costs for equipment and investment, recorded in Part 32 accounts, that are assigned to various Part 36 categories based upon how the equipment or investment in that category was used. With the imposition of the freeze on category relationships, carriers with frozen category relationships no longer adjust the assignment of costs to Part 36 categories based upon how the equipment or investment is being used, and instead assign costs to Part 36 categories in the same percentages as they had immediately before the freeze, even if the proportion of equipment or investment used for those categories of service changed. *See* 47 C.F.R. Part 32, Part 36. Jurisdictional allocation factors allocate costs assigned to Part 32 accounts for jointly used plants between the interstate (federal) and intrastate (state) jurisdictions. *Jurisdictional Separations Reform and Referral to the*

for the Joint Board to review these rules and carefully determine whether and how there should be reform of the existing separations rules, with the narrow exception that rate-of-return companies that have elected Alternative Connect America Cost Model (A-CAM) receive a one-time opportunity to unfreeze their category relationships immediately.

Historically, one of the primary purposes of the separations process has been to prevent incumbent LECs from recovering the same costs in both the interstate and intrastate jurisdictions. In 2001, the Commission adopted a recommendation by Joint Board to impose an interim freeze of the Part 36 category relationships and jurisdictional cost allocation factors, pending comprehensive reform of the Part 36 separations rules and concluded that this freeze would provide stability and regulatory certainty for carriers by minimizing any impact on separations results that might occur as a result of circumstances not contemplated by the Commission's Part 36 rules, such as growth in local competition and new technologies.[5] Accordingly, the Commission froze all Part 36 category relationships and allocation factors for price cap carriers and all allocation factors for rate-of-return carriers that elected to participate.[6]

When reform did not get off the ground, the Commission adopted orders in 2006 and, again, in 2009 and 2010, extending the freeze of Part 36 category relationships and jurisdictional cost allocation factors.[7] The Commission has now determined that given recent reforms to the

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Federal-State Joint Board, CC Docket No. 80-286, Recommended Decision, 15 FCC Rcd 13160, 13172, para. 20 (2000).

[5] *2001 Separations Freeze Order*, 16 FCC Rcd at 11389–90, para. 12.

[6] The frozen category relationships and allocation factors are based on data from the carriers' calendar year 2000 separations studies. *Id*. at 11387–88, para. 9.

[7] *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516 (2006) (*2006 Separations Freeze Extension Order*); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 24 FCC Rcd 6162 (2009) (*2009 Separations Freeze Extension Order*);

high-cost mechanisms and other changes such as revisions to Part 32, the time is truly right to take up permanent reform and seeks comment on whether or not an additional 18-month freeze is appropriate pending a full reform proceeding. USTelecom agrees that extending the freeze is appropriate at this time.

However, as the Commission points out, one of the key differences between now and when the extensions issued in 2006, 2009 and 2010 were adopted is that in the interim there has been *significant* rate-of-return USF reform. Last year, the Commission issued reforms that allowed carriers to leave the rate-of-return methodology for support in favor of optional A-CAM support.[8] Carriers that elected A-CAM support were removed from the legacy High Cost Loop Support and the new Connect America Fund Broadband Loop Support (formerly ICLS) mechanisms and will be receiving support through the A-CAM. The immediate effect of this most recent reform, in combination with the earlier CAF-ICC that established a gradual, measured transition that focused initially on reducing certain terminating switched access rates[9] as well as a transitional recovery mechanism to mitigate the effect of reduced intercarrier revenues on carriers[10] needs to be taken into account. The net effect of these reforms is that

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Jurisdictional Separations and Referral to the Federal-State Joint Board, CC Docket No. 80-286, Report and Order, 25 FCC Rcd 6046 (2010) (*2010 Separations Freeze Extension Order*).

[8] *See In the Matter of Connect America Fund, et al.*, WC Docket No. 10-90, et al., Report and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (Mar. 30, 2016).

[9] *See In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17676-77, para. 35 (2011) (*USF/ICC Transformation Order*).

[10] *USF/ICC Transformation Order*, 26 FCC Rcd at 17677, para. 36. In adopting the recovery mechanism, the Commission explained that it did so in large part "to provide predictability to incumbent

A-CAM electing companies only have Special Access service costs that are subject to the separations freeze. Holding these companies hostage to another freeze is inequitable and unnecessary.

While USTelecom supports an extension of the freeze for those companies remaining on the legacy support mechanisms, it does not make sense nor is it equitable to require A-CAM electing companies to continue to keep their frozen categories rather than allow those companies to set Special Access rates that accurately reflect their costs. In fact, in multiple instances where the Commission has granted waivers of the interim separations freeze, the Commission has determined that it is in the public interest to allow companies to unfreeze their category relationships specifically because allowing the petitioning companies to unfreeze their category relationships would permit the affected companies to "more accurately allocate its investment and will encourage further network upgrades."[11]

In its grants of the Eastex and Gila River[12] waiver requests the Commission noted a reluctance to grant multiple waivers without considering the potential collective impact of such requests on rates and the Universal Service Fund.[13] While stability is clearly an important policy

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carriers that had been receiving implicit ICC subsidies [and] to mitigate marketplace disruption during the reform transition. . . ." *Id.* at 17962, para. 858.

[11] *See In the Matter of Petition by Eastex Telephone Cooperative, Inc. Pursuant to 47 C.F.R Sections 36.3, 36.123–126, 36.141, 36.152–157, 36.191, and 36.372–382 for Commission Approval to Unfreeze Part 36 Category Relationships*, CC Docket No. 80-286, Oder 27 FCC Rcd 6357, 6361, para. 12 (Jun. 15, 2012) (*Eastex Waiver Order*).

[12] *In the Matter of Petition by Gila River Telecommunications, Inc. Pursuant to 47 C.F.R. Sections 36.3, 36.123-126, 36.152-157, and 36.372-382 for Commission Approval to Unfreeze Part 36 Category Relationships*, CC Docket No. 80-286, Report and Order, 25 FCC Rcd 17459, 17464–65, paras 12–13 (Nov. 30, 2010).

[13] *See Eastex Waiver Order* at 6.

objective, there are currently only 43 companies with frozen category relationships,[14] and only a smaller subset of those – 26 companies – that have elected A-CAM. In fact, some of those companies have had pending waiver requests to unfreeze these category relationships for several years.[15] Because the number of companies at issue – A-CAM electors who also have frozen category relationships – are so few and only Special Access rates would be impacted (any shifts in the switched access revenue requirement will be offset through CAF ICC adjustments for double recovery and shifts in the common line revenue requirement will only impact the individual A-CAM electing carrier), the net effects of allowing those companies to optionally unfreeze their category relationships will have little effect on other carriers.

In granting Eastex's waiver, the small effect on the Universal Service Fund was one of the key factors in permitting the waiver.[16] The small subset of carriers and the small amount of support at issue warrant the same treatment at this time. Rather than require these companies to continue to have Special Access rates that do not properly reflect reality, they should be permitted to unfreeze their category relationships immediately so as to reflect the revised category relationships in the July 31, 2017 filings consistent with the Commission's rules.

USTelecom agrees that determining how the spate of recent reforms will impact the separations process is an important and complex undertaking, and will take additional time. USTelecom also agrees that extending the freeze for 18 months is warranted for its potential

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[14] See Comments of the National Exchange Carrier Association, Inc.; NTCA – The Rural Broadband Association; ITTA; Eastern Rural Telecom Association; and WTA – Advocates For Rural Broadband, CC Docket 80-286 (Apr. 16, 2014) at 4-5.

[15] *See e.g.*, *Petition of Pioneer Telephone Cooperative, Inc. for Waiver of 47 C.F.R. Sections 26.36.123-126, 36.141, 36.152-57, 36191 and 36.372-382 to Unfreeze Part 36 Category Relationships*, CC Docket No. 80-286 (Mar. 20, 2013).

[16] *See Eastex Waiver Order at 6* ("the net shift of allocated costs permitted by this order will have only a *de minimis* effect on overall pool costs, and therefore will have little effect on switched or special access rates").

overall impact on the bulk of carriers. However, for those limited number of carriers that have elected A-CAM and wish to unfreeze their category relationships right away, USTelecom urges the Commission to act promptly to allow them to do so. Providing a small subset of carriers this opportunity would be consistent with the intent of the rule, as well as the Commission's express commitment to providing certainty, stability, and predictable support as part of the overall reform framework, and would help carriers meet the Commission's goals for improvement and extension of broadband facilities and service.

Respectfully submitted,

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