

Before the
Federal Communications Commission
Washington, D.C. 20554

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

REPORT AND ORDER

Adopted: June 12, 2014

Released: June 13, 2014

By the Commission: Commissioner O’Rielly issuing a statement.

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION..... 1
II. BACKGROUND..... 2
III. DISCUSSION ..... 10
IV. PROCEDURAL MATTERS..... 16
V. ORDERING CLAUSES..... 23
APPENDIX A – List of Commenters
APPENDIX B – Final Rules

I. INTRODUCTION

1. This Report and Order (Order) extends, through June 30, 2017, the existing freeze of the Federal Communications Commission’s (Commission) rules regarding jurisdictional separations. Specifically, the Commission extends the existing freeze of Part 36 category relationships and jurisdictional cost allocation factors.

1 See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5516, 5517, 5523, paras. 1, 16 (2006) (2006 Separations Freeze Extension and Further Notice) (extending for three years the initial separations freeze, which was scheduled to expire June 30, 2006); 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) (extending the separations freeze through June 30, 2010); 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) (extending the separations freeze through June 30, 2011); Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket No. 80-286, Report and Order, 26 FCC Rcd 7133 (2011) (2011 Separations Freeze Extension Order) (extending the separations freeze through June 30, 2012); Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket No. 80-286, Report and Order, 27 FCC Rcd 5593 (2012) (2012 Separations Freeze Extension Order) (extending the separations freeze through June 30, 2014); 47 C.F.R. pt. 36.

## II. BACKGROUND

2. Jurisdictional separations is the process by which incumbent LECs apportion regulated costs between the intrastate and interstate jurisdictions. Incumbent LECs record their costs pursuant to Part 32 of the Commission's regulations.<sup>2</sup> These costs are then divided between regulated and unregulated costs pursuant to Part 64 of the Commission's regulations.<sup>3</sup> Incumbent LECs then perform the jurisdictional separations process pursuant to Part 36 of the Commission's rules.<sup>4</sup>

3. The jurisdictional separations process itself has two parts. First, incumbent LECs assign regulated costs to various categories of plant and expenses. In certain instances, costs are further disaggregated among service categories.<sup>5</sup> Second, the costs in each category are apportioned between the intrastate and interstate jurisdictions.<sup>6</sup> These jurisdictional apportionments of categorized costs are based upon either a relative use factor, a fixed allocator, or, when specifically allowed in the Part 36 rules, by direct assignment.<sup>7</sup>

4. The statute requires the Commission to refer to the Federal-State Joint Board on Jurisdictional Separations (Joint Board) any proceeding regarding "the jurisdictional separations of common carrier property and expenses between interstate and intrastate operations" that the Commission institutes pursuant to a notice of proposed rulemaking.<sup>8</sup> In 1997, the Commission initiated a proceeding seeking comment on the extent to which legislative, technological, and market changes warranted comprehensive reform of the separations process.<sup>9</sup> The Commission also invited the State Members of

---

<sup>2</sup> 47 C.F.R. pt. 32.

<sup>3</sup> 47 C.F.R. §§ 64.901–04. Non-regulated activities generally consist of activities that have never been subject to regulation under Title II of the Communications Act of 1934, as amended; activities formerly subject to Title II regulation that the Commission has preemptively deregulated; and activities formerly subject to Title II regulation that have been deregulated at the interstate level, but not preemptively deregulated at the intrastate level, which the Commission decides should be classified as non-regulated activities for Title II accounting purposes. See 47 C.F.R. § 32.23(a); *Accounting Safeguards under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539, 17573 (1996) (subsequent history omitted).

<sup>4</sup> 47 C.F.R. Part 36. As the Supreme Court has recognized, procedures for the separation of intrastate and interstate property and expenses have been necessary for the appropriate recognition of authority between the interstate and intrastate jurisdictions. *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 148 (1930) (*Smith v. Illinois*); see also *MCI Telecommunications Corp. v. FCC*, 750 F.2d 135, 137 (D.C. Cir. 1984) (stating that "[j]urisdictional separation" is a procedure that determines what proportion of jointly used plant should be allocated to the interstate and intrastate jurisdictions for ratemaking purposes"); see also 47 U.S.C. § 152(b)(1) (the Commission does not have jurisdiction over "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier").

<sup>5</sup> For example, central office equipment (COE) Category 1 is Operator Systems Equipment, Account 2220. The Operator Systems Equipment account is further disaggregated or classified according to the following arrangements: (i) separate toll boards; (ii) separate local manual boards; (iii) combined local manual boards; (iv) combined toll and DSA boards; (v) separate DSA and DSB boards; (vi) service observing boards; (vii) auxiliary service boards; and (viii) traffic service positions. See 47 C.F.R. § 36.123.

<sup>6</sup> Part 69 of the Commission's regulations identifies how incumbent LECs may recover their interstate costs.

<sup>7</sup> Because some costs are directly assigned to a jurisdictionally pure service category, i.e., a category used exclusively for either intrastate or interstate communications, both steps are often effectively performed simultaneously. For example, the cost of private line service that is wholly intrastate in nature is assigned directly to the intrastate jurisdiction. See 47 C.F.R. § 36.154(a).

<sup>8</sup> 47 U.S.C. § 410(c); see also *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking and Order Establishing a Joint Board, 78 FCC 2d 837 (1980).

<sup>9</sup> *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice

the Joint Board to develop a report that would identify additional issues that should be addressed by the Commission in its comprehensive separations reform effort.<sup>10</sup> The State Members filed a report setting forth additional issues that they believed should be addressed by the Joint Board and proposing an interim freeze, among other things, to reduce the impact of changes in telephone usage patterns and resulting cost shifts from year to year.<sup>11</sup> The Commission noted that the current network infrastructure was vastly different from the network and services used to define the cost categories appearing in the Commission's Part 36 rules.<sup>12</sup>

5. On July 21, 2000, the Joint Board issued its *2000 Separations Recommended Decision*, recommending that, until comprehensive reform could be achieved, the Commission: (i) freeze Part 36 category relationships and jurisdictional allocation factors for incumbent LECs subject to price cap regulation (price cap incumbent LECs); and (ii) freeze the allocation factors for incumbent LECs subject to rate-of-return regulation (rate-of-return incumbent LECs).<sup>13</sup> In the *2001 Separations Freeze Order*, the Commission generally adopted the Joint Board's recommendation.<sup>14</sup> The Commission concluded that the freeze would provide stability and regulatory certainty for incumbent LECs by minimizing any impacts on separations results that might occur due to circumstances not contemplated by the Commission's Part 36 rules, such as growth in local competition and new technologies.<sup>15</sup> Further, the Commission found that a freeze of the separations process would reduce regulatory burdens on incumbent LECs during the transition from a regulated monopoly to a deregulated, competitive environment in the local telecommunications marketplace.<sup>16</sup> Under the freeze, price cap incumbent LECs calculate: (1) the

(Continued from previous page) \_\_\_\_\_  
of Proposed Rulemaking, 12 FCC Rcd 22120, 22126, para. 9 (1997) (*1997 Separations Notice*).

<sup>10</sup> *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382, 11386, para. 5 (2001) (*2001 Separations Freeze Order*).

<sup>11</sup> *Id.* at 11386, para. 6.

<sup>12</sup> *1997 Separations Notice*, 12 FCC Rcd at 22126–131, paras. 9–19.

<sup>13</sup> *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Recommended Decision, 15 FCC Rcd 13160 (Fed-State Jt. Bd. 2000) (*2000 Separations Recommended Decision*). The Commission sought public comment on the 2000 Separations Recommended Decision. See *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Public Notice, 15 FCC Rcd 15054 (Common Carr. Bur. 2000) (*2000 Separations Public Notice*). Part 32 contains the Uniform System of Accounts for Telecommunications Companies. It specifies the accounts that incumbent LECs must use to record their costs. See 47 C.F.R. Part 32. "Category relationships" are the percentage relationships of each Part 36 category to the total amount recorded in its corresponding Part 32 account(s). See 47 C.F.R. Parts 32, 36. "Jurisdictional allocation factors" are the percentage relationships that allocate costs assigned to Part 32 accounts for jointly used plant between the interstate (federal) and intrastate (state) jurisdictions. See *2000 Separations Recommended Decision*, 15 FCC Rcd at 13172, para. 20.

<sup>14</sup> *2001 Separations Freeze Order*, 16 FCC Rcd at 11387–88, para. 9.

<sup>15</sup> *Id.* at 11389–90, para. 12. Jurisdictional cost shifts in separations results generally are caused by changes in any of three areas: overall cost levels, categorization of costs (i.e., relative category assignments), or jurisdictional allocation factors. A carrier's increased overall cost level in a Part 32 account that has a high cost allocation to the interstate jurisdiction will cause shifts to the interstate jurisdiction for other investment and expense accounts whose jurisdictional allocations are dependent on that account. Increasing investment in specific categories (e.g., interexchange cable and wire facilities) may also contribute to jurisdictional shifts in the final results. Likewise, changes in customer calling patterns (e.g., increased interstate calling) will cause shifts in the jurisdictional allocation factors, many of which are based on usage. These factors allocate a significant portion of a carrier's investment between the interstate and intrastate jurisdictions.

<sup>16</sup> Although incumbent LECs were required under the Part 36 rules to perform separations studies, competitive carriers had no similar requirements. The Commission found that a freeze would further the Commission's goal of achieving greater competitive neutrality during the transition to a competitive marketplace by simplifying the separations process for those carriers subject to Part 36. *Id.* at 11390, para. 13.

relationships between categories of investment and expenses within Part 32 accounts; and (2) the jurisdictional allocation factors, as of a specific point in time, and then lock or “freeze” those category relationships and allocation factors in place for a set period of time. The carriers use the “frozen” category relationships and allocation factors for their calculations of separations results and therefore are not required to conduct separations studies for the duration of the freeze. Rate-of-return incumbent LECs are only required to freeze their allocation factors, but were given the option of also freezing their category relationships at the outset of the freeze.<sup>17</sup>

6. The Commission ordered that the freeze would be in effect for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first.<sup>18</sup> In addition, the Commission stated that, prior to the expiration of the separations freeze, the Commission would, in consultation with the Joint Board, determine whether the freeze period should be extended.<sup>19</sup> The Commission further stated that any decision to extend the freeze beyond the five-year period in the *2001 Separations Freeze Order* would be based “upon whether, and to what extent, comprehensive reform of separations has been undertaken by that time.”<sup>20</sup>

7. On May 16, 2006, in the *2006 Separations Freeze Extension and Further Notice*, the Commission extended the freeze for three years or until comprehensive reform could be completed, whichever came first.<sup>21</sup> The Commission concluded that extending the freeze would provide stability to LECs that must comply with the Commission’s jurisdictional separations rules pending further Commission action to reform the Part 36 rules, and that more time was needed to study comprehensive reform.<sup>22</sup> The freeze was subsequently extended by one year in 2009,<sup>23</sup> 2010,<sup>24</sup> and 2011<sup>25</sup> and by two years in 2012.<sup>26</sup>

8. When it extended the freeze in 2009, the Commission referred a number of issues to the Joint Board and asked the Joint Board to prepare a recommended decision.<sup>27</sup> The Commission asked the Joint Board to consider comprehensive jurisdictional separations reform, as well as an interim adjustment of the current jurisdictional separations freeze, and whether, how, and when the Commission’s jurisdictional separations rules should be modified.<sup>28</sup> On March 30, 2010, the State Members of the Joint Board released a proposal for interim and comprehensive separations reform.<sup>29</sup> The Joint Board sought comment on the proposal. On September 24, 2010, the Joint Board held a roundtable meeting with consumer groups, industry representatives, and state regulators to discuss interim and comprehensive

---

<sup>17</sup> *Id.* at 11388–89, para. 11.

<sup>18</sup> *See id.* at 11387–88, para. 9.

<sup>19</sup> *See id.* at 11397, para. 29.

<sup>20</sup> *Id.*

<sup>21</sup> *See 2006 Separations Freeze Extension and Further Notice*, 21 FCC Rcd 5516, 5523, para. 16.

<sup>22</sup> *Id.*

<sup>23</sup> *2009 Separations Freeze Extension Order*.

<sup>24</sup> *2010 Separations Freeze Extension Order*.

<sup>25</sup> *2011 Separations Freeze Extension Order*.

<sup>26</sup> *2012 Separations Freeze Extension Order*, 27 FCC Rcd at 5597, para. 12.

<sup>27</sup> *2009 Separations Freeze Extension Order*, 24 FCC Rcd 6167–69, paras. 15–20.

<sup>28</sup> *Id.* at 6167, para. 15.

<sup>29</sup> *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*, CC Docket No. 80-286, Public Notice, 25 FCC Rcd 3336 (Fed.-State Jt. Bd. 2010).

jurisdictional separations reform.<sup>30</sup> The Joint Board staff conducted an extensive analysis of various approaches to separations reform, and the Joint Board is evaluating that analysis.

9. In addition, in 2011, the Commission comprehensively reformed the universal service and intercarrier compensation systems<sup>31</sup> and proposed additional reforms.<sup>32</sup> The Joint Board is considering the impact of the reforms proposed by the *USF/ICC Transformation Order* and any subsequent changes on its analysis of the various approaches to separations reform. On March 27, 2014, the Commission sought comment on extending the freeze once more.<sup>33</sup>

### III. DISCUSSION

10. We extend through June 30, 2017, the freeze on Part 36 category relationships and jurisdictional cost allocation factors that the Commission adopted in the *2001 Separations Freeze Order*. As a result, price cap carriers will use the same relationships between categories of investment and expenses within Part 32 accounts and the same jurisdictional allocation factors that have been in place since the inception of the current freeze on July 1, 2001; rate-of-return carriers will use the same frozen jurisdictional allocation factors, and will (absent a waiver) use the same frozen category relationships if they had opted in 2001 to freeze those.

11. We conclude that extending the freeze will provide stability to carriers that must comply with the Commission's jurisdictional separations rules while the Joint Board continues its analysis of the jurisdictional separations process. The majority of commenters support extending the freeze for at least three years.<sup>34</sup> Significantly, the State Members of the Federal-State Board on Jurisdictional Separations agree with the proposed extension, "based upon our understanding that under the Commission's orders on various forbearance petitions, the States retain the ability to adopt any reasonable allocation of costs between the intrastate and interstate jurisdictions for State ratemaking and other purposes."<sup>35</sup>

12. NASUCA asserts that extending the freeze, rather than substantively reforming the separations rules, is not in the public interest.<sup>36</sup> Although NASUCA does not support the freeze, *per se*, it does not advocate for returning to pre-freeze regulations, which would be the consequence of permitting the freeze to expire before new separations rules are in effect. The Joint Board is considering

---

<sup>30</sup> *Federal-State Joint Board on Jurisdictional Separations Announces September 24, 2010 Meeting and Roundtable Discussion of Jurisdictional Separations Reform*, CC Docket No. 80-286, Public Notice, 25 FCC Rcd 13245 (Wireline Comp. Bur. 2010).

<sup>31</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and FNPRM*), *aff'd sub nom. In re: FCC 11-161*, \_\_\_ F.3d \_\_\_, 2014 WL 2142106 (10th Cir. May 23, 2014).

<sup>32</sup> *Id.* at 18047-149, paras. 1028-1403.

<sup>33</sup> *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Further Notice of Proposed Rulemaking, FCC 14-27 (rel. Mar. 27, 2014) (*2014 Separations Freeze Extension FNPRM*). Appendix A lists the parties that filed Comments and Reply Comments on the *2014 Separations Freeze Extension FNPRM*.

<sup>34</sup> See State Members Comments at 1; GVNW Comments at 2; CenturyLink Comments at 1; ILEC Associations Comments at 2; SCC Comments at 2; and USTelecom Comments at 1.

<sup>35</sup> State Members Comments at 1. GVNW generally supports the State Members, as long as any costs that states reallocate to the interstate jurisdiction are recoverable. GVNW Comments at 2-3. NASUCA, however, disagrees with GVNW, stating that there should be no guarantee that all of a carrier's costs will be recoverable. NASUCA Reply Comments at 3.

<sup>36</sup> NASUCA Comments at 4 ("NASUCA submits (again) that extending the freeze, without actual action to solve the underlying separations issues, is not in the public interest."); NASUCA Reply Comments at 3 ("[I]t is time for the Commission to bite the bullet and transition to costing that reflects the costs and uses of the new network.").

comprehensive separations reform.<sup>37</sup> We find that an extension of the freeze is necessary in the interim to avoid regulatory instability and substantial administrative burdens on carriers. If the Commission allowed the earlier separations rules to return to force, carriers would be required to reinstitute their former separations processes even though many carriers no longer have the necessary employees and systems in place to comply with the old jurisdictional separations process and likely would have to hire or reassign and train employees and redevelop systems for collecting and analyzing the data necessary to perform separations in the prior manner.<sup>38</sup> To require carriers to reinstitute their separations systems “would be unduly burdensome when there is a significant likelihood that there would be no lasting benefit to doing so.”<sup>39</sup> Therefore, we find that a three-year extension is appropriate.

13. The Small Company Coalition recommends a longer extension, until the transition to bill and keep for terminating access is complete, in July 2020.<sup>40</sup> USTelecom recommends an indefinite extension of the freeze, arguing that separations requirements are increasingly irrelevant,<sup>41</sup> and GVNW argues for an unspecified longer extension.<sup>42</sup> We decline to extend the freeze for more than three years, because the Joint Board may recommend specific reforms and the Commission may be able to substantively address separations rule reform well before the bill and keep transition is complete.

14. Pioneer Telephone Cooperative, which has requested a waiver of its cost category relationship freeze, expresses concern that the grant of the freeze extension without simultaneously granting Pioneer’s waiver will only perpetuate the misallocation of its expenses and investment.<sup>43</sup> As explained above, we conclude that allowing the freeze to expire would create unnecessary burdens and disruption for carriers. The decision to extend the freeze does not affect the Commission’s ability to address pending<sup>44</sup> or future waiver petitions.

15. In the *2014 Separations Freeze Extension FNPRM*, we also sought comment on whether to open a filing “window” for rate-of-return incumbent LECs to file waiver requests to unfreeze their jurisdictional separations category relationships.<sup>45</sup> We do not address that in this Order.

#### IV. PROCEDURAL MATTERS

16. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>46</sup> requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a

---

<sup>37</sup> See *supra* para. 10.

<sup>38</sup> See *2012 Separations Freeze Extension Order*, 27 FCC Rcd at 5598, para 14.

<sup>39</sup> *2006 Separations Freeze Extension and Further Notice*, 21 FCC Rcd at 5525, para. 23.

<sup>40</sup> SCC Comments at 2-3.

<sup>41</sup> USTelecom Comments at 1-4. CenturyLink also argues that the separations process should ultimately become unnecessary. CenturyLink Comments at 1-2.

<sup>42</sup> GVNW Comments at 2.

<sup>43</sup> Pioneer Comments at 2.

<sup>44</sup> Terral Telephone Company, Inc., Petition for Waiver of 47 C.F.R. Sections 36.3; 36.123-126, 36-141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships, CC Docket No. 80-286 (filed Aug. 29, 2012); Pioneer Telephone Cooperative, Inc. Petition for Waiver of 47 C.F.R. Section 36.3, 36.123-126, 36-141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships, CC Docket No. 80-286 (filed Mar. 22, 2013).

<sup>45</sup> *2014 Separations Freeze Extension FNPRM* at 1, 15, 17.

<sup>46</sup> See 5 U.S.C. § 604. The RFA, see 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

significant economic impact on a substantial number of small entities.”<sup>47</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>48</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>49</sup> A “small business concern” is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>50</sup>

17. As discussed above, in 2001 the Commission adopted a Joint Board recommendation 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.<sup>51</sup> The Commission ordered that the freeze would be in effect for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first.<sup>52</sup> On May 16, 2006, concluding that more time was needed to implement comprehensive separations reform, the Commission extended the freeze for three years or until such comprehensive reform could be completed, whichever came first.<sup>53</sup> On May 15, 2009, the Commission extended the freeze through June 30, 2010,<sup>54</sup> on May 24, 2010, extended the freeze through June 30, 2011,<sup>55</sup> on May 3, 2011, extended the freeze through June 30, 2012,<sup>56</sup> and on May 8, 2012, extended the freeze through June 30, 2104.<sup>57</sup>

18. The purpose of the current extension of the freeze is to allow the Commission and the Joint Board additional time to consider changes that may need to be made to the separations process in light of changes in the law, technology, and market structure of the telecommunications industry without creating the undue instability and administrative burdens that would occur were the Commission to eliminate the freeze.<sup>58</sup>

19. Implementation of the freeze extension will ease the administrative burden of regulatory compliance for LECs, including small incumbent LECs. The freeze has eliminated the need for all incumbent LECs, including incumbent LECs with 1500 employees or fewer, to complete certain annual studies formerly required by the Commission’s rules. The effect of the freeze extension is to reduce a regulatory compliance burden for small incumbent LECs, by abating the aforementioned separations studies and providing these carriers with greater regulatory certainty. Therefore, we certify that the requirement of the report and order will not have a significant economic impact on a substantial number of small entities.

---

<sup>47</sup> 5 U.S.C. § 605(b).

<sup>48</sup> 5 U.S.C. § 601(6).

<sup>49</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>50</sup> 15 U.S.C. § 632.

<sup>51</sup> See *supra* para. 8; *2001 Separations Freeze Order*, 16 FCC Rcd at 11387–88, para. 9.

<sup>52</sup> *2001 Separations Freeze Order*, 16 FCC Rcd at 11387–88, para. 9.

<sup>53</sup> *2006 Separations Freeze Extension and Further Notice*, 21 FCC Rcd at 5523, para. 16.

<sup>54</sup> *2009 Separations Freeze Extension Order*, 24 FCC Rcd at 6165–69, paras. 11–20.

<sup>55</sup> *2010 Separations Freeze Extension Order*, 25 FCC Rcd at 6049, para. 10.

<sup>56</sup> *2011 Separations Freeze Extension Order*, 26 FCC Rcd at 7137, para. 11.

<sup>57</sup> *2012 Separations Freeze Extension Order*, 27 FCC Rcd at 5597, para. 12.

<sup>58</sup> See *supra* para. 13.

20. The Commission will send a copy of the report and order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.<sup>59</sup> In addition, the report and order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.<sup>60</sup>

21. *Paperwork Reduction Act Analysis.* This Report and Order does not contain new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new, modified, or proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

22. *Congressional Review Act.* The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>61</sup>

23. *Effective Date.* We find good cause to make these rule changes effective immediately upon publication in the Federal Register. As explained above, the current freeze is scheduled to expire on June 30, 2014.<sup>62</sup> To avoid unnecessary disruption to carriers subject to these rules, we preserve the status quo by making the extension of the freeze effective before the scheduled expiration date.

## V. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 201-05, 215, 218, 220, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-205, 215, 218, 220, and 410, that this Report and Order is ADOPTED.

25. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

26. IT IS FURTHER ORDERED, pursuant to section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. § 553(d)(3), and sections 1.4(b)(1) and 1.427(b) of the Commission's rules, 47 C.F.R. § 1.4(b)(1), 1.427(b), that this Report and Order SHALL BE EFFECTIVE on the date of publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

---

<sup>59</sup> *See* 5 U.S.C. § 801(a)(1)(A).

<sup>60</sup> *See* 5 U.S.C. § 605(b).

<sup>61</sup> *See* 5 U.S.C. § 801(a)(1)(A).

<sup>62</sup> *See supra* note 1.



## APPENDIX A

## List of Commenters

**Commenter**

State Members of the Federal State Board on Separations  
 National Association of State Utility Consumer Advocates  
 GVNW Consulting, Inc.  
 CenturyLink  
 National Exchange Carrier Association, Inc., NTCA – The Rural  
 Broadband Association, ITTA, Eastern Rural Telecom Association,  
 and WTA – Advocates for Rural Broadband  
 Pioneer Telephone Cooperative, Inc.  
 Small Company Coalition  
 United States Telecom Association

**Abbreviation**

State Members  
 NASUCA  
 GVNW  
 CenturyLink  
 ILEC Associations  
  
 Pioneer  
 SCC  
 USTelecom

**Reply Commenter**

National Association of State Utility Consumer Advocates

**Abbreviation**

NASUCA

**APPENDIX B****Final Rules**

The attached rules differ from the existing Part 36 rules in the end date of the separations freeze, which has changed to June 30, 2017.

**PART 36 - JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES**

1. The authority citation for Part 36 continues to read as follows:

AUTHORITY: 47 U.S.C. Secs. 151, 154(i) and (j), 205, 221(c), 254, 403, and 410.

**Subpart A – General**

2. Amend Section 36.3 by revising paragraphs (a), (b), (c), (d) and (e) to read as follows:

**§ 36.3 Freezing of jurisdictional separations category relationships and/or allocation factors**

(a) Effective July 1, 2001, through June 30, 2017, all local exchange carriers subject to Part 36 rules shall apportion costs to the jurisdictions using their study area and/or exchange specific jurisdictional allocation factors calculated during the twelve month period ending December 31, 2000, for each of the categories/sub-categories as specified herein. Direct assignment of private line service costs between jurisdictions shall be updated annually. Other direct assignment of investment, expenses, revenues or taxes between jurisdictions shall be updated annually. Local exchange carriers that invest in telecommunications plant categories during the period July 1, 2001, through June 30, 2017, for which it had no separations allocation factors for the twelve month period ending December 31, 2000, shall apportion that investment among the jurisdictions in accordance with the separations procedures in effect as of December 31, 2000 for the duration of the freeze.

(b) Effective July 1, 2001, through June 30, 2017, local exchange carriers subject to price cap regulation, pursuant to § 61.41, shall assign costs from the Part 32 accounts to the separations categories/sub-categories, as specified herein, based on the percentage relationships of the categorized/sub-categorized costs to their associated Part 32 accounts for the twelve month period ending December 31, 2000. If a Part 32 account for separations purposes is categorized into more than one category, the percentage relationship among the categories shall be utilized as well. Local exchange carriers that invest in types of telecommunications plant during the period July 1, 2001, through June 30, 2017, for which it had no separations category investment for the twelve month period ending December 31, 2000, shall assign such investment to separations categories in accordance with the separations procedures in effect as of December 31, 2000. Local exchange carriers not subject to price cap regulation, pursuant to § 61.41 of this chapter, may elect to be subject to the provisions of § 36.3(b). Such election must be made prior to July 1, 2001. Local exchange carriers electing to become subject to § 36.3(b) shall not be eligible to withdraw from such regulation for the duration of the freeze. Local exchange carriers participating in Association tariffs, pursuant to § 69.601 et seq., shall notify the Association prior to July 1, 2001, of such intent to be subject to the provisions of § 36.3(b). Local exchange carriers not participating in Association tariffs shall notify the Commission prior to July 1, 2001, of such intent to be subject to the provisions of § 36.3(b).

(c) Effective July 1, 2001, through June 30, 2017, any local exchange carrier that sells or otherwise transfers exchanges, or parts thereof, to another carrier's study area shall continue to utilize the factors and, if applicable, category relationships as specified in §§ 36.3(a) and (b).

(d) Effective July 1, 2001, through June 30, 2017, any local exchange carrier that buys or otherwise acquires exchanges or part thereof, shall calculate new, composite factors and, if applicable, category relationships based on a weighted average of both the seller's and purchaser's factors and category relationships calculated pursuant to §§ 36.3(a) and (b). This weighted average should be based on the number of access lines currently being served by the acquiring carrier and the number of access lines in the acquired exchanges.

\* \* \* \* \*

(e) Any local exchange carrier study area converting from average schedule company status, as defined in § 69.605(c), to cost company status during the period July 1, 2001, through June 30, 2017, shall, for the first twelve months subsequent to conversion categorize the telecommunications plant and expenses and develop separations allocation factors in accordance with the separations procedures in effect as of December 31, 2000. Effective July 1, 2001 through June 30, 2017, such companies shall utilize the separations allocation factors and account categorization subject to the requirements of §§ 36.3(a) and (b) based on the category relationships and allocation factors for the twelve months subsequent to the conversion to cost company status.

\* \* \* \* \*

### **Subpart B - Telecommunications Property Central Office Equipment**

3. Amend Section 36.123 by revising paragraphs (a)(5) and (a)(6) to read as follows:

#### **§ 36.123 Operator systems equipment - Category 1.**

(a) \* \* \*

(5) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the average balance of Account 2220, Operator Systems, to the categories/subcategories, as specified in § 36.123(a)(1), based on the relative percentage assignment of the average balance of Account 2220 to these categories/subcategories during the twelve month period ending December 31, 2000.

(6) Effective July 1, 2001 through June 30, 2017, all study areas shall apportion the costs assigned to the categories/subcategories, as specified in § 36.123(a)(1), among the jurisdictions using the relative use measurements for the twelve month period ending December 31, 2000 for each of the categories/subcategories specified in §§ 36.123 (b) through 36.123(e).

\* \* \* \* \*

4. Amend Section 36.124 by revising paragraphs (c) and (d) to read as follows:

#### **§ 36.124 Tandem switching equipment - Category 2.**

\* \* \* \* \*

(c) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the average balances of Accounts 2210, 2211, and 2212 to Category 2, Tandem Switching Equipment based on the relative percentage assignment of the average balances of

Account 2210, 2211, 2212, and 2215 to Category 2, Tandem Switching Equipment during the twelve month period ending December 31, 2000.

(d) Effective July 1, 2001, through June 30, 2017, all study areas shall apportion costs in Category 2, Tandem Switching Equipment, among the jurisdictions using the relative number of study area minutes of use, as specified in § 36.124(b), for the twelve month period ending December 31, 2000. Direct assignment of any subcategory of Category 2 Tandem Switching Equipment between jurisdictions shall be updated annually.

\* \* \* \* \*

5. Amend Section 36.125 by revising paragraphs (h), (i), and (j) to read as follows:

**§ 36.125 Local switching equipment - Category 3.**

\* \* \* \* \*

(h) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the average balances of Accounts 2210, 2211, and 2212 to Category 3, Local Switching Equipment, based on the relative percentage assignment of the average balances of Account 2210, 2211, 2212 and 2215 to Category 3, during the twelve month period ending December 31, 2000.

(i) Effective July 1, 2001, through June 30, 2017, all study areas shall apportion costs in Category 3, Local Switching Equipment, among the jurisdictions using relative dial equipment minutes of use for the twelve month period ending December 31, 2000.

\* \* \* \* \*

(j) If the number of a study area's access lines increases such that, under section 36.125(f) of this part, the weighted interstate DEM factor for 1997 or any successive year would be reduced, that lowered weighted interstate DEM factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor. If the number of a study area's access lines decreases or has decreased such that, under section 36.125(f) of this part, the weighted interstate DEM factor for 2010 or any successive year would be raised, that higher weighted interstate DEM factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor.

6. Amend Section 36.126 by revising paragraphs (b)(6), (c)(4), (e)(4), and (f)(2) to read as follows:

**§ 36.126 Circuit equipment - Category 4.**

\* \* \* \* \*

(b) \* \* \*

(6) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41, shall assign the average balances of Accounts 2230 through 2232 to the categories/subcategories as specified in §§ 36.126(b)(1) through (b)(4) based on the relative percentage assignment of the average balances of Accounts 2230 through 2232 costs to these categories/subcategories during the twelve month period ending December 31, 2000.

(c) \* \* \*

(4) Effective July 1, 2001, through June 30, 2017, all study areas shall apportion costs in the categories/subcategories, as specified in §§ 36.126(b)(1) through (b)(4), among the jurisdictions using the relative use measurements or factors, as specified in §§ 36.126(c)(1) through (c)(3) for the twelve month period ending December 31, 2000. Direct assignment of any subcategory of Category 4.1 Exchange Circuit Equipment to the jurisdictions shall be updated annually.

\* \* \* \* \*

(e) \* \* \*

(4) Effective July 1, 2001, through June 30, 2017, all study areas shall apportion costs in the categories/subcategories specified in §§ 36.126(e)(1) through (e)(3) among the jurisdictions using relative use measurements or factors, as specified in §§ 36.126(e)(1) through (e)(3) for the twelve month period ending December 31, 2000. Direct assignment of any subcategory of Category 4.2 Interexchange Circuit Equipment to the jurisdictions shall be updated annually.

(f) \* \* \*

(2) Effective July 1, 2001, through June 30, 2017, all study areas shall apportion costs in the subcategory specified in § 36.126(f)(1) among the jurisdictions using the allocation factor, as specified in § 36.126(f)(1)(i), for this subcategory for the twelve month period ending December 31, 2000. Direct assignment of any Category 4.3 Host/Remote Message Circuit Equipment to the jurisdictions shall be updated annually.

\* \* \* \* \*

### **Information Origination/Termination Expenses**

7. Amend Section 36.141 by revising paragraph (c) to read as follows:

#### **§ 36.141 General.**

\* \* \* \* \*

(c) Effective July 1, 2001, through June 30, 2017, local exchange carriers subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the average balance of Account 2310 to the categories, as specified in § 36.141(b), based on the relative percentage assignment of the average balance of Account 2310 to these categories during the twelve month period ending December 31, 2000.

\* \* \* \* \*

8. Amend Section 36.142 by revising paragraph (c) to read as follows:

#### **§ 36.142 Categories and apportionment procedures.**

\* \* \* \* \*

(c) Effective July 1, 2001, through June 30, 2017, all study areas shall apportion costs in the categories, as specified in § 36.141(b), among the jurisdictions using the relative use measurements or factors, as specified in § 36.142(a), for the twelve month period ending December 31, 2000. Direct assignment of any category of Information Origination/Termination Equipment to the jurisdictions shall be updated annually.

\* \* \* \* \*

### **Cable and Wire Facilities**

9. Amend Section 36.152 by revising paragraph (d) to read as follows:

#### **§ 36.152 Categories of Cable and Wire Facilities (C&WF).**

\* \* \* \* \*

(d) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41, shall assign the average balance of Account 2410 to the categories/subcategories, as specified in §§ 36.152(a) through (c), based on the relative percentage assignment of the average balance of Account 2410 to these categories/subcategories during the twelve month period ending December 31, 2000.

\* \* \* \* \*

10. Amend Section 36.154 by revising paragraph (g) to read as follows:

#### **§ 36.154 Exchange Line Cable and Wire Facilities (C&WF) - Category 1 – apportionment procedures.**

\* \* \* \* \*

(g) Effective July 1, 2001, through June 30, 2017, all study areas shall apportion Subcategory 1.3 Exchange Line C&WF among the jurisdictions as specified in § 36.154(c). Direct assignment of subcategory Categories 1.1 and 1.2 Exchange Line C&WF to the jurisdictions shall be updated annually as specified in § 36.154(b).

\* \* \* \* \*

11. Amend Section 36.155 by revising paragraph (b) to read as follows:

#### **§ 36.155 Wideband and exchange trunk (C&WF) - Category 2 - apportionment procedures.**

\* \* \* \* \*

(b) Effective July 1, 2001, through June 30, 2017, all study areas shall apportion Category 2 Wideband and exchange trunk C&WF among the jurisdictions using the relative number of minutes of use, as specified in § 36.155(a), for the twelve-month period ending December 31, 2000. Direct assignment of any Category 2 equipment to the jurisdictions shall be updated annually.

\* \* \* \* \*

12. Amend Section 36.156 by revising paragraph (c) to read as follows:

#### **§ 36.156 Interexchange Cable and Wire Facilities (C&WF) - Category 3 - apportionment procedures.**

\* \* \* \* \*

(c) Effective July 1, 2001, through June 30, 2017, all study areas shall directly assign Category 3 Interexchange Cable and Wire Facilities C&WF where feasible. All study areas shall apportion the non-

directly assigned costs in Category 3 equipment to the jurisdictions using the relative use measurements, as specified in § 36.156(b), during the twelve-month period ending December 31, 2000.

\* \* \* \* \*

13. Amend Section 36.157 by revising paragraph (b) to read as follows:

**§ 36.157 Host/remote message Cable and Wire Facilities (C&WF) - Category 4 - apportionment procedures.**

\* \* \* \* \*

(b) Effective July 1, 2001, through June 30, 2017, all study areas shall apportion Category 4 Host/Remote message Cable and Wire Facilities C&WF among the jurisdictions using the relative number of study area minutes-of-use kilometers applicable to such facilities, as specified in § 36.157(a)(1), for the twelve month period ending December 31, 2000. Direct assignment of any Category 4 equipment to the jurisdictions shall be updated annually.

\* \* \* \* \*

**Equal Access Equipment**

14. Amend Section 36.191 by revising paragraph (d) to read as follows:

**§ 36.191 Equal access equipment.**

\* \* \* \* \*

(d) Effective July 1, 2001, through June 30, 2017, all study areas shall apportion Equal Access Equipment, as specified in § 36.191(a), among the jurisdictions using the relative state and interstate equal access traffic, as specified in § 36.191(c), for the twelve month period ending December 31, 2000.

\* \* \* \* \*

**Subpart C - Operating Revenues and Certain Income Accounts  
Operating Revenues**

15. Amend Section 36.212 by revising paragraph (c) to read as follows:

**§ 36.212 Basic local services revenue—Account 5000 (Class B telephone companies); Basic area revenue—Account 5001 (Class A telephone companies).**

\* \* \* \* \*

(c) Wideband Message Service revenues from monthly and miscellaneous charges, service connections, move and change charges, are apportioned between state and interstate operations on the basis of the relative number of minutes-of-use in the study area. Effective July 1, 2001, through June 30, 2017, all study areas shall apportion Wideband Message Service revenues among the jurisdictions using the relative number of minutes of use for the twelve-month period ending December 31, 2000.

\* \* \* \* \*

16. Amend Section 36.214 by revising paragraph (a) to read as follows:

**§ 36.214 Long distance message revenue - Account 5100.**

(a) Wideband message service revenues from monthly and miscellaneous charges, service connections, move and change charges, are apportioned between state and interstate operations on the basis of the relative number of minutes-of-use in the study area. Effective July 1, 2001, through June 30, 2017, all study areas shall apportion Wideband Message Service revenues among the jurisdictions using the relative number of minutes of use for the twelve-month period ending December 31, 2000.

\* \* \* \* \*

**Subpart D - Operating Expenses and Taxes  
Customer Operations Expenses**

17. Amend Section 36.372 by revising to read as follows:

**§ 36.372 Marketing—Account 6610 (Class B telephone companies); Accounts 6611 and 6613 (Class A telephone companies).**

The expenses in this account are apportioned among the operations on the basis of an analysis of current billing for a representative period, excluding current billing on behalf of others and billing in connection with intercompany settlements. Effective July 1, 2001, through June 30, 2017, all study areas shall apportion expenses in this account among the jurisdictions using the analysis, as specified in § 36.372(a), during the twelve-month period ending December 31, 2000.

\* \* \* \* \*

18. Amend Section 36.374 by revising paragraphs (b) and (d) to read as follows:

**§ 36.374 Telephone Operator Services.**

\* \* \* \* \*

(b) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the Telephone operator expense classification based on the relative percentage assignment of the balance of Account 6620 to this classification during the twelve month period ending December 31, 2000.

\* \* \* \* \*

(d) Effective July 1, 2001, through June 30, 2017, all study areas shall apportion Telephone operator expenses among the jurisdictions using the relative number of weighted standard work seconds, as specified in § 36.374(c), during the twelve-month period ending December 31, 2000.

\* \* \* \* \*

19. Amend Section 36.375 by revising paragraphs (b)(4) and (b)(5) to read as follows:

**§ 36.375 Published directory listing.**

\* \* \* \* \*

(b) \* \* \*



(4) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41, shall assign the balance of Account 6620-Services to the classifications, as specified in §§ 36.375(b)(1) through 36.375(b)(4), based on the relative percentage assignment of the balance of Account 6620 to these classifications during the twelve month period ending December 31, 2000.

(5) Effective July 1, 2001, through June 30, 2017, all study areas shall apportion Published directory listing expenses using the underlying relative use measurements, as specified in §§ 36.375(b)(1) through 36.375(b)(4), during the twelve-month period ending December 31, 2000. Direct assignment of any Publishing directory listing expense to the jurisdictions shall be updated annually.

\* \* \* \* \*

20. Amend Section 36.377 by revising paragraphs (a), (a)(1)(ix), (a)(2)(vii), (a)(3)(vii), (a)(4)(vii), (a)(5)(vii), and (a)(6)(vii) to read as follows:

**§ 36.377 Category 1 - Local business office expense.**

(a) The expense in this category for the area under study is first segregated on the basis of an analysis of job functions into the following subcategories: End user service order processing; end user payment and collection; end user billing inquiry; interexchange carrier service order processing; interexchange carrier payment and collection; interexchange carrier billing inquiry; and coin collection and administration. Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the subcategories, as specified in § 36.377(a), based on the relative percentage assignment of the balance of Account 6620 to these categories/subcategories during the twelve month period ending December 31, 2000.

(1) \* \* \*

(ix) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the categories/subcategories, as specified in §§ 36.377(a)(1)(i) through 36.377(a)(1)(viii), based on the relative percentage assignment of the balance of Account 6620 to these categories/subcategories during the twelve month period ending December 31, 2000. Effective July 1, 2001, through June 30, 2017, all study areas shall apportion TWX service order processing expense, as specified in § 36.377(a)(1)(viii) among the jurisdictions using relative billed TWX revenues for the twelve-month period ending December 31, 2000. All other subcategories of End-user service order processing expense, as specified in §§ 36.377(a)(1)(i) through 36.377(a)(1)(viii), shall be directly assigned.

(2) \* \* \*

(vii) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620- Services to the subcategories, as specified in §§ 36.377(a)(2)(i) through 36.377(a)(2)(vi), based on the relative percentage assignment of the balance of Account 6620 to these categories/subcategories during the twelve month period ending December 31, 2000. All other subcategories of End User payment and collection expense, as specified in §§ 36.377(a)(2)(i) through 36.377(a)(2)(v), shall be directly assigned.

(3) \* \* \*

(vii) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the subcategories, as specified in §§ 36.377(a)(3)(i) through 36.377(a)(3)(vi), based on the relative percentage assignment of

the balance of Account 6620 to these subcategories during the twelve month period ending December 31, 2000. All other subcategories of End user billing inquiry expense, as specified in §§ 36.377(a)(3)(i) through 36.377(a)(3)(vi) shall be directly assigned.

(4) \* \* \*

(vii) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the subcategories, as specified in §§ 36.377(a)(4)(i) through 36.377(a)(4)(vi), based on the relative percentage assignment of the balance of Account 6620 to these subcategories during the twelve month period ending December 31, 2000. All subcategories of Interexchange carrier service order processing expense, as specified in §§ 36.377(a)(4)(i) through 36.377(a)(4)(vi), shall be directly assigned.

(5) \* \* \*

(vii) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the subcategories, as specified in §§ 36.377(a)(5)(i) through 36.377(a)(5)(vi), based on the relative percentage assignment of the balance of Account 6620 to these subcategories during the twelve month period ending December 31, 2000. All subcategories of Interexchange carrier payment expense, as specified in §§ 36.377(a)(5)(i) through 36.377(a)(5)(vi), shall be directly assigned.

(6) \* \* \*

(vii) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the subcategories, as specified in §§ 36.377(a)(6)(i) through 36.377(a)(6)(vi), based on the relative percentage assignment of the balance of Account 6620 to these subcategories during the twelve month period ending December 31, 2000. All subcategories of Interexchange carrier billing inquiry expense, as specified in §§ 36.377(a)(6)(i) through 36.377(a)(6)(vi), shall be directly assigned.

\* \* \* \* \*

21. Amend Section 36.378 by revising paragraph (b)(1) to read as follows:

**§ 36.378 Category 2 - Customer services (revenue accounting).**

\* \* \* \* \*

(b) \* \* \*

(1) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the classifications, as specified in § 36.378(b), based on the relative percentage assignment of the balance of Account 6620 to those classifications during the twelve month period ending December 31, 2000.

\* \* \* \* \*

22. Amend Section 36.379 by revising paragraphs (b)(1) and (b)(2) to read as follows:

**§ 36.379 Message processing expense.**

\* \* \* \* \*

(b) \* \* \*

(1) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the subcategories, as specified in § 36.379(b), based on the relative percentage assignment of the balance of Account 6620 to those subcategories during the twelve month period ending December 31, 2000.

(2) Effective July 1, 2001, through June 30, 2017, all study areas shall apportion Toll Ticketing Processing Expense among the jurisdictions using the relative number of toll messages for the twelve-month period ending December 31, 2000. Local Message Process Expense is assigned to the state jurisdiction.

\* \* \* \* \*

23. Amend Section 36.380 by revising paragraphs (d) and (e) to read as follows:

**§ 36.380 Other billing and collecting expense.**

\* \* \* \* \*

(d) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the Other billing and collecting expense classification based on the relative percentage assignment of the balance of Account 6620 to those subcategory during the twelve month period ending December 31, 2000.

(e) Effective July 1, 2001, through June 30, 2017, all study areas shall apportion Other billing and collecting expense among the jurisdictions using the allocation factor utilized, pursuant to §§ 36.380(b) or (c), for the twelve month period ending December 31, 2000.

\* \* \* \* \*

24. Amend Section 36.381 by revising paragraphs (c) and (d) to read as follows:

**§ 36.381 Carrier access charge billing and collecting expense.**

\* \* \* \* \*

(c) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to the Carrier access charge billing and collecting expense classification based on the relative percentage assignment of the balance of Account 6620 to that classification during the twelve month period ending December 31, 2000.

(d) Effective July 1, 2001, through June 30, 2017, all study areas shall apportion Carrier access charge billing and collecting expense among the jurisdictions using the allocation factor, pursuant to § 36.381(b), for the twelve-month period ending December 31, 2000.

\* \* \* \* \*

25. Amend Section 36.382 by revising paragraph (a) to read as follows:

**§ 36.382 Category 3 - All other customer services expense.**

(a) Effective July 1, 2001, through June 30, 2017, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620-Services to this category based on the relative percentage assignment of the balance of Account 6620 to this category during the twelve month period ending December 31, 2000.

\* \* \* \* \*

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286.

Today's order is undeniably necessary to avoid re-imposing arcane jurisdictional separations rules on a small segment of the communications industry. Indeed, it has been so long—thirteen years—since the rules have been in effect that many carriers no longer have the staff or systems in place to comply with them. Therefore, I support the order.

That said, I question the need to continue the jurisdictional separations rules at all in light of intervening regulatory and marketplace changes. As the order explains, jurisdictional separations is the process by which *incumbent local exchange carriers* apportion *regulated costs* between the *intrastate and interstate* jurisdictions. That description nicely encapsulates why we should give sunseting these rules serious consideration. As consumers increasingly opt for all-distance service from a variety of unregulated competitors in an IP world, the concepts of regulated costs and jurisdictional line drawing no longer make sense. These onerous rules only ever applied to incumbent LECs to begin with, and many of the larger LECs have gotten out from underneath them through a series of forbearance orders, leaving only the smaller LECs on the hook. Furthermore, the *USF/ICC Transformation Order* fundamentally changed how regulated carriers recover their costs, which significantly diminished the relevance of jurisdictional separations for even the small carriers.

Meanwhile, the ever-lengthening freeze has spawned its own share of problems. Carriers that voluntarily agreed to the freeze assuming it would only last for five years have expressed concern that extending it yet again would perpetuate a misallocation of investments and expenses. That is why several parties asked to open a window for affected rate-of-return incumbent LECs to file petitions for waiver to unfreeze their cost category relationships—a request we should have acted upon here.

I would have preferred to take these unnecessary rules off the books rather than prolong a problematic freeze of their application. I hope that the Federal-State Joint Board on Jurisdictional Separations will use this additional three-year window to complete a comprehensive review, with an eye towards ending these rules.