

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

FURTHER NOTICE OF PROPOSED RULEMAKING

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I. INTRODUCTION

1. In 1970, when monopoly rate-of-return local exchange carriers (LECs) provided telephone service over circuit-switched, voice networks, the Commission first codified its jurisdictional separations rules to divide the costs of providing service between the interstate and intrastate jurisdictions. Today, most consumers have access to voice, data, and video services that are increasingly being provided over Internet Protocol-based networks. As a result of new digital technologies, the lines between interstate and intrastate communications are increasingly blurred, making the jurisdictional separations rules inadequate to accomplish their intended purpose. Moreover, over the last several decades, the Commission has undertaken initiatives that have incrementally replaced burdensome cost-based regulation with the efficiencies of incentive regulation, further diminishing the relevance of the separations rules.

2. In the 2001 Separations Freeze Order, in light of statutory, technological, and marketplace changes in the provision of telecommunications services, the Commission froze the

jurisdictional separations rules to allow time for the Federal-State Joint Board on Jurisdictional Separations (Joint Board) to develop recommendations on comprehensive separations reform.¹ The Commission has repeatedly extended the separations freeze over the past 17 years, and with the current freeze extension set to expire on December 31, 2018, we take up this issue once more. Because we expect that the benefits of further extending the jurisdictional separations freeze likely outweigh the costs of allowing it to end, in this Further Notice of Proposed Rulemaking (*Further Notice*), we propose to extend the freeze for 15 years and invite comment on this proposal. We also seek comment on whether the Commission should alter the scope of its referral to the Joint Board regarding comprehensive separations reform. Additionally, we propose and seek comment on allowing rate-of-return carriers that elected to freeze their category relationships in 2001 to opt out of that freeze.

II. BACKGROUND

A. The Jurisdictional Separations Process

3. Rate-of-return incumbent LECs use their networks and other resources to provide both interstate and intrastate services. To help prevent the recovery of the same costs from both the interstate and intrastate jurisdictions, our rules require that rate-of-return incumbent LECs divide their costs and revenues between the respective jurisdictions.² These “jurisdictional separations” rules were designed to ensure that rate-of-return incumbent LECs apportion the costs of their regulated services between the interstate or intrastate jurisdictions in a manner that reflects the relative use of their networks to provide interstate or intrastate services.³

4. Jurisdictional separations is the third step in a four-step regulatory process. First, a rate-of-return carrier records its costs and revenues in various accounts using the Uniform System of Accounts prescribed by the Commission’s Part 32 rules.⁴ Second, the carrier divides the costs and revenues in these accounts between regulated and nonregulated activities in accordance with the Commission’s Part 64 rules, a step that helps ensure that the costs of nonregulated activities will not be recovered through regulated interstate rates.⁵ Third, the carrier separates the regulated costs and revenues between the interstate and intrastate jurisdictions using the Commission’s Part 36 jurisdictional separations rules.⁶ Finally, the carrier apportions the interstate regulated costs among the interexchange services and the rate elements that form the cost basis for its exchange access tariffs. Carriers subject to rate-of-return regulation perform this apportionment in accordance with the Commission’s Part 69 rules.⁷

5. Rate-of-return incumbent LECs perform annual cost studies that include jurisdictional separations. The jurisdictional separations analysis begins with the categorization of the incumbent LEC’s regulated costs and expenses, requiring the incumbent LEC to assign the regulated costs and

¹ *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 (2001) (*2001 Separations Freeze Order*). Pursuant to the Communications Act of 1934, as amended (the Act), the Commission is required to refer to a Federal-State Joint Board any proceeding regarding “the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it institutes pursuant to a notice of proposed rulemaking.” 47 U.S.C. § 410(c). The Commission established the Joint Board in 1980. *See Amendment of Part 67 of the Commission’s Rules*, CC Docket No. 80-286, Notice of Proposed Rulemaking and Order Establishing a Joint Board, 78 FCC 2d 837 (1980).

² *See* 47 CFR Part 36.

³ *See id.* § 36.2(c) (“[t]he fundamental basis on which separations are made is the use of telecommunications plant in” interstate and intrastate operations).

⁴ *Id.* Part 32.

⁵ The Part 64 cost allocation rules are codified in 47 CFR §§ 64.901-904.

⁶ 47 CFR Part 36.

⁷ *Id.* Part 69.

revenues recorded in its Part 32 accounts to various investment, expense, and revenue categories.⁸ The incumbent LEC then allocates the costs or revenues in each category between the interstate and intrastate jurisdictions. Amounts in categories that are used exclusively for interstate or intrastate communications are directly assigned to the appropriate jurisdiction.⁹ Amounts in categories that support both interstate and intrastate services are allocated between the jurisdictions using relative use factors or fixed allocators.¹⁰

6. The vast majority of the jurisdictional separations rules were last updated more than 30 years ago and reflect the mix of services and the marketplace circumstances of that time.¹¹ In 1997, the Commission initiated a proceeding to comprehensively reform those rules to ensure that they reflected the statutory, technological, and marketplace changes that had affected the telecommunications industry.¹² In the *2001 Separations Freeze Order*, the Commission, pursuant to a Joint Board recommendation, froze the Part 36 separations rules for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first (“the separations freeze”).¹³

7. More specifically, the Commission adopted a freeze of all Part 36 category relationships and allocation factors for price cap carriers, and a freeze of all allocation factors for rate-of-return carriers.¹⁴ It also gave rate-of-return carriers a one-time option to freeze their category relationships, enabling each of these carriers to determine whether such a freeze would be beneficial “based on its own circumstances and investment plans.”¹⁵ The election deadline to opt into the category relationships freeze was June 30, 2001.¹⁶

8. In adopting the separations freeze, the Commission concluded that several issues, including the separations treatment of Internet traffic, should be addressed in the context of comprehensive separations reform.¹⁷ The Commission further 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 the adoption of new technologies.¹⁸ The Commission also found that a freeze of the separations process would reduce regulatory burdens on incumbent LECs during the

⁸ In some instances, the incumbent LEC further disaggregates costs and revenues among subcategories. For convenience, this *Further Notice* uses “categories” to encompass both categories and subcategories.

⁹ For example, the cost of private line service that is wholly intrastate is directly assigned to the intrastate jurisdiction. *See* 47 CFR § 36.154(a), (b).

¹⁰ For example, 25 percent of the message loop costs are allocated to the interstate jurisdiction and 75 percent of the costs to the intrastate jurisdiction. *See id.* § 36.154(c).

¹¹ *See MTS and WATS Market Structure, Amendments of Part 67 (New Part 36) of the Commission's Rules and Establishment of a Federal-State Joint Board*, CC Docket Nos. 78-72, 80-286, 86-297, Report and Order, 2 FCC Rcd 2639 (1987).

¹² *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22126, para. 9 (1997).

¹³ *2001 Separations Freeze Order*, 16 FCC Rcd at 11393-408, paras. 18-55 (describing the components of the separations freeze in detail).

¹⁴ *Id.* at 11383, para. 2.

¹⁵ *Id.* at 11394, para. 21.

¹⁶ 47 CFR § 36.3(b).

¹⁷ *2001 Separations Freeze Order*, 16 FCC Rcd at 11383, para. 2.

¹⁸ *Id.* at 11389-90, para. 12.

transition from a regulated monopoly to a deregulated, competitive environment in the local telecommunications marketplace.¹⁹

9. The Commission has since granted price cap carriers forbearance from the Part 36 jurisdictional separations rules.²⁰ As a result, the separations freeze applies only to rate-of-return carriers, all of whom have frozen allocation factors. Those rate-of-return carriers that chose to freeze their category relationships in 2001 assign investment and expenses within their Part 32 accounts to categories using their separations category relationships from 2000,²¹ and allocate their categorized costs between the interstate and intrastate jurisdictions using their allocation factors from 2000.²² This use of “frozen” category relationships and allocation factors frees carriers from conducting separations studies for the duration of the freeze.

B. Declining Applicability of Jurisdictional Separations Results

10. Over the years, the Commission has undertaken initiatives that reduce the role a carrier’s costs play in the regulation of rates and in the distribution of high-cost universal service support. Consequently, the significance of jurisdictional separations results has declined. The first of these initiatives was the application of price cap regulation to the largest local exchange carriers, a step that eventually severed the link between separations results and interstate rates for those carriers.²³ Subsequently, as noted above, the Commission forbore from application of the jurisdictional separations rules to price cap incumbent LECs, leaving rate-of-return incumbent LECs as the only carriers required to comply with the separations rules. More recent Commission reforms have eliminated the need for cost

¹⁹ 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.

²⁰ In 2008, the Commission conditionally granted petitions for forbearance from the Part 36 jurisdictional separations rules to AT&T, BellSouth, Verizon, and Qwest. *See Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160 from Enforcement of Certain of the Commission’s Cost Assignment Rules; Petition of BellSouth Telecommunications, Inc. for Forbearance under 47 U.S.C. § 160 from Enforcement of Certain of the Commission’s Cost Assignment Rules*, WC Docket Nos. 07-21, 05-342, Memorandum Opinion and Order, 23 FCC Rcd 7302, 7307, para. 12 (2008); *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering et al.*, WC Docket No. 08-190 et al., Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647, 13662-63, para. 27 (2008). In 2013, the Commission extended the conditional forbearance grant to the remaining price cap incumbent LECs. *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations et al.*, WC Docket No. 12-61 et al., Memorandum Opinion and Order and Report and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking, 28 FCC Rcd 7627, 7646-54, paras. 31-51 (2013) (*USTelecom Forbearance Long Order*), *pet. for rev. denied sub nom. Verizon v. FCC*, 770 F.3d 961 (D.C. Cir. 2014). In 2017, the Commission terminated the conditions placed on these carriers when they were granted forbearance. *Comprehensive Review of the Part 32 Uniform System of Accounts; Jurisdictional Separations and Referral to the Federal-State Joint Board*, WC Docket No. 14-130, CC Docket No. 80-286, Report and Order, 32 FCC Rcd 1735, 1748-49, para. 44 (2017).

²¹ The relationship of each category’s costs to the regulated costs recorded in a Part 32 account is known as a category relationship and is expressed as a percentage. *See* 47 CFR § 36.3.

²² *Id.* § 36.3(a).

²³ *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786 (1990), *aff’d sub nom. National Rural Telecom Ass’n, v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

data for large portions of rate-of-return carriers' operations as well.²⁴ Specifically, in 2011, as part of comprehensive reform and modernization of the universal service and intercarrier compensation systems, the Commission adopted rate caps (including a transition to bill-and-keep for certain rate elements) for switched access services for rate-of-return carriers, thereby severing the relationship between cost and switched access rates.²⁵ In addition, in 2016, the Commission gave rate-of-return carriers the option of receiving high-cost universal service support based on the Alternative-Connect America Cost Model (A-CAM).²⁶ More than 200 carriers opted to receive A-CAM support, which eliminated the need for those carriers to perform cost studies that required jurisdictional separations to quantify the amount of high-cost support for their common line offerings.²⁷

11. As a result of these reforms, rate-of-return carriers now use separations cost results only for the following limited purposes: (a) establishing their business data services (special access) rates; (b) calculating interstate common line support for those carriers that have not elected A-CAM support; and (c) calculating subscriber line charge (SLC) levels for the minority of carriers whose SLCs are below the maximum level.²⁸ The Universal Service Administrative Company (USAC) uses categorization results for calculating high-cost loop support, but without applying jurisdictional allocations.²⁹ States also use separations results to determine the amount of intrastate universal service support and to calculate regulatory fees, and some states perform rate-of-return ratemaking using intrastate costs.

12. We expect that the use of jurisdictional separations will continue to decline. For example, earlier this year, the Commission adopted a Notice of Proposed Rulemaking that seeks comment on migrating additional rate-of-return carriers to model-based support.³⁰ In a more recent Notice of Proposed Rulemaking, the Commission proposed to allow A-CAM carriers to transition their business data services offerings from rate-of-return to incentive-based regulation.³¹

C. Procedural History

13. The Commission has extended the separations freeze seven times, with the most recent extension set to expire on December 31, 2018.³² In adopting and extending the freeze, the Commission

²⁴ See, e.g., *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*), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

²⁵ *Id.*

²⁶ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3094-3117, paras. 17-79 (2016) (*Rate-of-Return Reform Order*); see also *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13775 (2016).

²⁷ See *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive \$454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, 32 FCC Rcd 842 (2017) (explaining a total of 207 rate-of-return carriers are authorized to receive model-based support to date); *Rate-of-Return Reform Order*, 31 FCC Rcd at 3097, para. 21.

²⁸ *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers*, WC Docket No. 17-144, Notice of Proposed Rulemaking, FCC 18-46, at 13-14, para. 30 (rel. Apr. 18, 2018) (*Rate-of-Return BDS NPRM*); *Rate-of-Return Reform Order*, 31 FCC Rcd at 3118, para. 82.

²⁹ 47 CFR § 54.1310. USAC administers the Commission's universal service programs.

³⁰ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29, at 46-51, paras. 117-37 (rel. Mar. 23, 2018).

³¹ *Rate-of-Return BDS NPRM*, at 2, 4, paras. 1, 4.

³² *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 32 FCC Rcd 4219 (2017) (*2017 Separations Freeze Extension Order*); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 29 FCC Rcd at 6470 (2014) (*2014 Separations Freeze Extension Order*); *Jurisdictional Separations and Referral to the Federal-State Joint*

has reasoned that the freeze would stabilize and simplify the separations process while the Joint Board and the Commission continued to work on separations reform.³³ In its most recent freeze extension order, the Commission also explained that an extension until December 31, 2018, would provide the Joint Board with sufficient time to consider what effects the Commission's most recent reforms to the high-cost universal service program and intercarrier compensation should have on the separations rules.³⁴

14. Since the Commission initiated this proceeding in 1997, the Joint Board—comprised of both state and federal members—has been attempting to develop recommendations for comprehensive reform. In response to the Commission's initial referral, the State Members of the Joint Board filed a report identifying issues they believed should be addressed.³⁵ Over the years, the State Members filed policy papers setting out options for reform, the Commission or the Joint Board sought comment, and the Joint Board held hearings and meetings to consider the various proposals.³⁶ Nevertheless, despite the Commission's repeated extensions of the separations freeze to provide the Joint Board with additional time to issue a Recommended Decision, the Joint Board has not recommended comprehensive reforms.³⁷

15. The Commission has twice waived the category relationships freeze to allow individual carriers to adjust the amounts assigned to separations categories to reflect network upgrades.³⁸ In 2010, the Commission waived that freeze to allow Gila River Telecommunications, Inc., a tribally owned carrier that had upgraded its local loop plant in order to increase the telephone penetration rate in its extremely high-cost service territory, to increase the high-cost loop support it received from the Universal

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Board, CC Docket No. 80-286, Report and Order, 27 FCC Rcd 5593 (2012); *Jurisdictional Separations 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*); *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*); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 24 FCC Rcd 6162 (2009); *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, 5517, 5523, paras. 1, 16 (2006).

³³ See, e.g., *2017 Separations Freeze Extension Order*, 32 FCC Rcd at 4223, para 11; *2001 Separations Freeze Order*, 16 FCC Rcd at 11389-90, paras. 11-13.

³⁴ *2017 Separations Freeze Extension Order*, 32 FCC Rcd at 4223, para. 10.

³⁵ State Members' Report on Comprehensive Review of Separations, CC Docket No. 80-286 (filed Dec. 21, 1998).

³⁶ See, e.g., Letter from David J. Lynch, Iowa Utilities Board, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 80-286 (filed Dec. 17, 2001) (attaching "Options for Separations: A Paper Prepared by the State Members of the Separations Joint Board"); *Common Carrier Bureau Seeks Comment on "Glide Path" Policy Paper Filed by State Members of the Federal-State Joint Board on Jurisdictional Separations*, CC Docket No. 80-286, Public Notice, 16 FCC Rcd 22551 (CCB 2001).

³⁷ Most recently, on April 24, 2017, the Joint Board released a public notice seeking to refresh the record on issues related to comprehensive separations reform. *Federal-State Joint Board on Jurisdictional Separations Seeks to Refresh Record on Issues Related to Jurisdictional Separations*, CC Docket No. 80-286, 32 FCC Rcd 3234 (Fed.-State Jt. Bd. 2017) (*April 2017 Public Notice*). Comments were due on May 24, 2017, and replies were due June 8, 2017.

³⁸ See *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, Order, 25 FCC Rcd 17459 (2010) (*Gila River Waiver Order*); *Petition by Eastex Telephone Cooperative, 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, Order, 27 FCC Rcd 6357 (WCB 2012) (*Eastex Waiver Order*). Two other petitions to waive these rules are pending. Terral Telephone Company, Inc., *Petition for Waiver of 47 CFR 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. 2, 2012); *Petition of Pioneer Telephone Cooperative, Inc. for Waiver of 47 CFR 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 Mar. 22, 2013) (*Pioneer Waiver Petition*).

Service Fund (USF) consistent with prior waivers of other universal service rules for carriers serving tribal lands.³⁹ In 2012, the Wireline Competition Bureau (Bureau) also waived the category relationships freeze to allow Eastex Telephone Cooperative, Inc. (Eastex), a rural cooperative that had upgraded its network with soft switches and fiber to improve its broadband services, to increase its settlements from the National Exchange Carrier Association, Inc. (NECA) special access pool, reducing Eastex's reliance on the USF.⁴⁰

III. DISCUSSION

16. We view jurisdictional separations reform, and the question of whether to extend the separations freeze, in light of our ongoing efforts to transition from rate-of-return to incentive regulation and to eliminate or avoid imposing any unnecessary burdens on carriers. After weighing the likely benefits of extending the freeze against the likely costs of allowing it to end on December 31, 2018, we propose to extend the separations freeze for 15 years and to provide a time-limited opportunity for carriers that elected the category relationships freeze to opt out of that freeze. We invite comment on these proposals and on the proposed rule changes set forth in Appendix A. We also invite comment on whether we should modify any other aspects of the separations freeze if we adopt our proposal to extend it.

A. Further Extending the Separations Freeze

17. Completion of comprehensive separations reform by the expiration of the freeze on December 31, 2018 is highly unlikely. Most fundamentally, we would prefer not to move forward on separations reform without a Joint Board recommendation on an approach to such reform, and the Board is not close to reaching a recommendation.⁴¹ As Commissioner Michael O'Rielly, Chairman of the Joint Board, recently observed, "the viewpoints" within the Joint Board "are so vastly different on this complex issue that finding commonality is not going to [be] possible in the near term."⁴² Moreover, even if the Joint Board were to offer a recommendation for our consideration, we would then likely seek comment on that recommendation before issuing an order revising the separations rules.⁴³ Therefore, as a practical matter, we must choose between extending the separations freeze and allowing long-unused separations rules to take effect on January 1, 2019.

18. The Commission has previously found that letting the freeze expire and allowing largely outmoded separations rules to be reinstated would impose significant burdens on rate-of-return carriers and create undue instability.⁴⁴ In extending the freeze in 2017, the Commission explained that reinstating the separations rules would require substantial training and investment by rural incumbent LECs, and

³⁹ *Gila River Waiver Order*, 25 FCC Rcd at 17462-65, paras. 7, 11-13.

⁴⁰ *Eastex Waiver Order*, 27 FCC Rcd at 6360-61, paras. 9-10; Petition of Eastex Telephone Cooperative, Inc. to Unfreeze Part 36 Category Relationships, CC Docket No. 80-286, at 3 (filed May 25, 2011).

⁴¹ See 47 U.S.C. § 410(c) (requiring the Commission to refer jurisdictional separations reform to the Joint Board and requiring the Joint Board to "prepare a recommended decision for prompt review and action by the Commission").

⁴² *Comprehensive Review of the Part 32 Uniform System of Accounts et al.*, WC Docket No. 14-130, CC Docket No. 80-286, Notice of Proposed Rulemaking, FCC 18-22, at 18 (2018) (*Separations Part 32 Harmonization NPRM*) (Statement of Joint Board Chairman Michael O'Rielly).

⁴³ Additionally, we would need to publish notice of the revised rules in the Federal Register in sufficient time for them to take effect by January 1, 2019.

⁴⁴ *2017 Separations Freeze Extension Order*, 32 FCC Rcd at 4223, para. 11 (citing NTCA Apr. 24, 2017 Extension PN Reply at 1-2; WTA Apr. 24, 2017 Extension PN Reply at 1-3; *2014 Separations Freeze Extension Order*, 29 FCC Rcd at 6474-75, para. 12); *2011 Separations Freeze Extension Order*, 26 FCC Rcd at 7137, para. 13; *2010 Separations Freeze Extension Order*, 25 FCC Rcd at 6049, para. 11.

could cause significant disruptions in regulated rates, cost recovery, and other operating conditions.⁴⁵ The Commission found that the “clear benefits that will result from granting a further extension” of the freeze outweighed any possible harms.⁴⁶ It concluded that requiring carriers to reinstate their separations systems “would be unduly burdensome when there is a significant likelihood that there would be no lasting benefit to doing so.”⁴⁷

19. We find the Commission’s prior analysis compelling and, similarly, that the benefits of an additional extension of the freeze likely would far outweigh any potential harms. We therefore propose to extend the separations freeze and to direct rate-of-return incumbent LECs to continue to use the same frozen jurisdictional allocation factors. We invite comment on this proposal and on the relative costs and benefits of continuing the separations freeze.

20. In view of these circumstances, we propose to extend the freeze for 15 years and invite comment on this proposal.⁴⁸ We also invite comment on whether a shorter extension would be preferable. We ask that commenters discuss the advantages and disadvantages of a long or short extension period, and provide specific reasons in support of their recommended timeframes. What effect, if any, would particular extension periods have on ratepayers? Is our choice of an extension period likely to distort rate levels? Commenters supporting relatively short extension periods should also take into account the time necessary for the Commission and the industry to implement any separations decisions and rule changes.

21. In this regard, we recognize that the issues before the Joint Board are extremely complex, and the Federal and State members of the Joint Board have not issued a Recommended Decision on comprehensive separations reform in the two decades since the Commission originally proposed such reform. As such, how likely is it that the Joint Board will issue a Recommended Decision on comprehensive separations reform within a relatively short extension period? If consensus within that timeframe is unlikely, should the Commission adopt a relatively long extension? Or should we permanently extend the separations freeze, as USTelecom suggests?⁴⁹ Would a relatively long or permanent extension be inconsistent with section 201(b) of the Act’s prohibition on unjust and unreasonable charges?⁵⁰

22. We also seek comment on whether the Commission should change the scope of the issues referred to the Joint Board. In April 2017, the Joint Board issued a public notice seeking comment to refresh the record on issues related to comprehensive, permanent separations reform.⁵¹ Several commenters in response to that public notice recognized the steadily diminishing role of separations results in federal and state regulation, and argued that the Commission should not undertake comprehensive separations reform at the present time because it would be premature, disruptive, and

⁴⁵ *2017 Separations Freeze Extension Order*, 32 FCC Rcd at 4223, para. 11 (citing WTA Apr. 24, 2017 Extension PN Reply at 2).

⁴⁶ *Id.* at 4224, para. 12 (finding the harm alleged by a commenter to be speculative and insufficient).

⁴⁷ *Id.* at 4224, para. 11.

⁴⁸ See *Separations Part 32 Harmonization NPRM* at 18 (Statement of Joint Board Chairman Michael O’Rielly) (“I have . . . recommended that the Commission immediately pursue a longer extension of the current freeze than what has been done in the past (i.e., 15 years.)”).

⁴⁹ USTelecom May 24, 2017 Comments at 2 (“Instead of trying to fix the separations rules, the Commission should indefinitely extend the separations freeze and focus on fully implementing all of [the] recent changes to intercarrier compensation and universal service reform. . . . [T]hese recent reforms have all but eliminated separations for many providers.”).

⁵⁰ See 47 U.S.C. § 201(b).

⁵¹ *April 2017 Public Notice*, 32 FCC Rcd at 3234.

counterproductive.⁵² In view of that opposition, should we find that any separations reform in the foreseeable future should be narrowly targeted and change the scope of the issues referred to the Joint Board accordingly? If so, how should we modify the referral to the Joint Board?

B. Allowing Carriers that Elected the Category Relationships Freeze an Opportunity to Change Their Elections

23. We propose to provide a one-time opportunity for carriers that opted to freeze their category relationships in 2001 to opt out of that freeze, so that they can categorize their costs based on current circumstances rather than their circumstances in 2000. Presently, rate-of-return carriers in approximately 45 study areas operate under the category relationships freeze. When the Commission granted rate-of-return carriers the opportunity to elect the category relationships freeze, it specified that the freeze would be an interim, “transitional measure” lasting no more than five years.⁵³ But the freeze has now lasted 17 years, and carriers that elected it are prohibited from withdrawing from their elections.⁵⁴ Many of these carriers have since invested in network upgrades or are considering future upgrades. As a result of the category relationships freeze, these carriers may be unable to recover the costs of those investments from the ratepayers that will benefit from those upgrades, or from the USF.⁵⁵ Consequently, these carriers may lack incentives to improve service and deploy advanced technologies like broadband for their customers. We therefore propose and invite comment on allowing carriers to opt out of the category relationships freeze. What are the costs and benefits of this proposal?

24. In the past, commenters have urged the Commission to allow carriers that elected the category relationships freeze to unfreeze those relationships. For example, ITTA points out that the Commission originally allowed rate-of-return carriers the flexibility to decide whether or not to freeze their category relationships because those carriers’ size and investment patterns vary widely. ITTA argues that the Commission should provide these carriers with the flexibility to unfreeze their category relationships for similar reasons.⁵⁶ ITTA explains that some carriers with frozen category relationships “will embrace the opportunity to more accurately allocate their investment,” while others “will find reinstating their separations systems unduly burdensome.”⁵⁷ Moss Adams, NTCA, WTA, and USTelecom argue that unfreezing category relationships will allow carriers to assign costs in a manner that reflects how they offer services today and will enable carriers to take greater advantage of universal service funds that support broadband deployment.⁵⁸ We invite commenters to elaborate on why the Commission should allow carriers to unfreeze their category relationships. We also seek input from any commenters that oppose such action. We seek input on the costs and benefits of permitting carriers to unfreeze their category relationships—both from carriers that believe they may benefit from an unfreeze and from carriers, if applicable, that believe unfreezing category relationships would not be beneficial for them.

⁵² See generally CenturyLink May 24, 2017 Comments; Moss Adams June 8, 2017 Comments; NTCA June 8, 2017 Reply; USTelecom May 24, 2017 Comments; WTA May 24, 2017 Comments.

⁵³ *2001 Separations Freeze Order*, 16 FCC Rcd at 11383, 11392, paras. 2, 17.

⁵⁴ See 47 CFR § 36.3 (carriers electing the category relationships freeze are not eligible to withdraw their elections).

⁵⁵ See, e.g., NTCA June 8, 2017 Reply at 4.

⁵⁶ ITTA May 24, 2017 Comments at 9-10 (citing *2001 Separations Freeze Order*, 16 FCC Rcd at 11393-95, paras. 18, 21-22).

⁵⁷ *Id.* at 10 (citing *2017 Separations Freeze Extension Order*, 32 FCC Rcd at 4223, para. 11; *Eastex Waiver Order*, 27 FCC Rcd at 6361, para. 12).

⁵⁸ See, e.g., Moss Adams June 8, 2017 Comments at 3 (stating that unfreezing categories is necessary for carriers “to meaningfully participate in the new Connect America Fund Broadband Loop Support (‘CAF BLS’) mechanism [for] Consumer Broadband-Only Loop (‘CBOL’) service”); WTA May 24, 2017 Comments at 11 (stating that increased costs of providing broadband service should be recognized for recovering revenue requirements and qualifying for CAF-BLS support).

25. In the years since 2000, many, and perhaps all, carriers subject to the category relationships freeze have made substantial investments to modernize their networks and to improve and expand their service offerings. In at least some instances, these investments are more weighted toward business data services, and away from switched access and common line categories, than the carriers' investments were as of 2000.⁵⁹ If that is the case, under the category relationships freeze, disproportionate percentages of those carriers' investments are currently assigned to the common line and switched access categories. Are carriers that elected the category relationships freeze consequently unable to recover the costs of network upgrades from their business data services customers and from NECA's special access pool? If so, how does that circumstance impact their switched access rates? How many carriers subject to the category relationships freeze face these conditions, and how many would benefit from opting out of that freeze?

26. We ask commenters to specifically describe their current network investments compared to their investments in 2000 and to specify how their category relationships would change without a freeze. We invite comment on what effect allowing carriers to opt out of the category relationships freeze would have on future investment. For example, would lifting the category relationships freeze promote greater investment in newer technologies and increased broadband deployment, and if so, how? We also seek input on what impact unfreezing category relationships would have on how carriers recover their costs. For example, if carriers are allowed to update their network cost assignments to more accurately reflect the services they provide today, how would the pricing of services—particularly business data services—be affected? Would carriers seek to better align their rates for specific services with the underlying costs of those services? Would opting out of the freeze result in more efficient pricing, and how would it affect consumers in terms of service and pricing?

27. Allowing carriers to opt out of the category relationships freeze will necessarily shift costs between jurisdictions and among access elements, and may affect the universal service funding the carrier receives. We ask parties to describe the direction of these changes and, where possible, to quantify them. More specifically, to what extent would unfreezing carriers' category relationships shift costs from the intrastate jurisdiction to the interstate jurisdiction, and from common line to special access? In the event of such shifts, what would be the effect on the carriers' receipt of CAF BLS and other universal service funding?

28. We seek comment on whether we should impose measures to prevent carriers that opt out of the category relationships freeze from double-recovering costs through end-user charges and Connect America Fund intercarrier compensation (CAF ICC) support. If so, what specific measures should we adopt? For example, in the *Eastex Waiver Order*, the Bureau addressed the concern that a rate-of-return carrier might receive an inappropriate amount of universal service funding or double-recover its costs when its category relationships were unfrozen.⁶⁰ This situation could occur because, under the *USF/ICC Transformation Order*, a carrier can in certain situations recover its reduced intercarrier compensation revenue through CAF ICC support based on a cost recovery mechanism that is tied to a carrier's interstate switched access revenue requirement for October 1, 2010 through September 30, 2011 (FY2011).⁶¹ Thus, there is a risk that, as a carrier moves costs from the interstate switched access category into different categories, it could double-recover the same costs—once through CAF ICC support and again through special access rates and related NECA settlements.

29. To prevent such a double recovery, in granting a waiver of the category relationships freeze to Eastex, the Bureau required Eastex to recalculate its 2011 Rate-of-Return Carrier Base Period

⁵⁹ See, e.g., *Eastex Waiver Order*, 27 FCC Rcd at 6363-64, para. 19; Pioneer Waiver Petition at 6; Letter from Mary J. Sisak, Counsel to Terral Telephone Company, Inc., CC Docket No. 80-286, at 2 (filed May 2, 2018) (Terral May 2, 2018 *Ex Parte* Letter); Letter from Mary J. Sisak, Counsel to Terral Telephone Company, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 80-286, at 1 (filed Aug. 16, 2017).

⁶⁰ See generally *Eastex Waiver Order*, 27 FCC Rcd 6357.

⁶¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17961, 17977, paras. 853, 892; see 47 CFR § 51.519(b)(7), (d).

Revenue (BPR) using actual, unfrozen categories and to file a revised interstate switched access revenue requirement.⁶² The Bureau expected that the recalculation would reduce the interstate switched access revenue requirement included in Eastex's BPR and shift costs from interstate common line to interstate special access.⁶³ The Bureau concluded that removing "an amount representative of the FY2011 interstate revenue attributable to the investment being shifted from interstate switched access to other categories" from possible recovery though CAF ICC support would protect consumers and the USF.⁶⁴

30. Consistent with this precedent, should we require any carrier that opts out of the category relationships freeze to recalculate its BPR using unfrozen category relationships and to file a revised interstate switched access revenue requirement with the Commission? If we require carriers that are allowed to unfreeze their category relationships to recalculate their BPRs, we propose to use 2011 cost study data because those are the most recent data that do not reflect the effects of the *USF/ICC Transformation Order*. We invite parties to comment on this approach. While some carriers may have the necessary data to perform the study, others may not. For those that do not, we invite parties to propose an alternative means of estimating the BPR adjustment that should be made.

31. To the extent that a carrier's BPR is adjusted by the preceding calculations, should we require that the carrier adjust its interstate switched access rate cap by a percentage amount equal to the adjustment made to the interstate projected revenue requirement component of the BPR? The carrier would then revise its rates to reflect the transitions mandated by the *USF/ICC Transformation Order* as of the date of the next annual access tariff filing. We invite parties to comment on this approach and on whether it would provide a reasonable method for eliminating potential double recoveries resulting from unfreezing category relationships.

32. In the interest of simplicity, we propose to allow carriers subject to the category relationships freeze a single opportunity to unfreeze their frozen category relationships. We seek comment on that approach. If we provide this one-time opportunity, should we require that carriers electing to unfreeze their category relationships make conforming changes to their tariffs effective on July 1, 2019? If so, should we require that carriers with frozen categories notify the Commission and NECA (if a carrier participates in NECA's special access pool) by March 1, 2019 of their decisions to opt out of the category relationships freeze? Would a July 1, 2019 effective date provide carriers with sufficient time to implement any changes needed to update category relationships?

33. In the alternative, should we allow carriers subject to the category relationships freeze to unfreeze their category relationships at any date they choose in the future? What would be the benefits and drawbacks of such an approach? Should we allow a carrier presently subject to the category relationships freeze that opts to unfreeze its category relationships to refreeze those relationships at some future date? What would be the costs and benefits of this approach?

34. Instead of *allowing* carriers the option of unfreezing their category relationships, should we *require* all rate-of-return carriers that currently operate under the category relationships freeze to unfreeze their category relationships? What would be the impact of lifting the category relationships freeze for all carriers that elected the relationships freeze in 2001? Would it significantly increase the accuracy of separations results and, if so, would any benefits from that increased accuracy outweigh any costs that a mandatory unfreeze would impose?

35. In adopting the separations freeze in 2001, the Commission anticipated that its "waiver process [would] provide a mechanism for relief when special circumstances warrant a deviation from the

⁶² *Eastex Waiver Order*, 27 FCC Rcd at 6363-64, paras. 19-20. A carrier's BPR is based upon its 2011 interstate switched access revenue requirement, plus FY2011 intrastate switched access revenues and FY2011 net reciprocal compensation revenues. *USF/ICC Transformation Order*, 26 FCC Rcd at 17977, para. 892.

⁶³ *Eastex Waiver Order*, 27 FCC Rcd at 6363-64, para. 19.

⁶⁴ *Id.*

freeze.”⁶⁵ We previously granted two petitions for waiver to allow carriers to withdraw from the category relationships freeze and have two waiver requests pending.⁶⁶ If we do not allow all affected carriers to unfreeze their category relationships in this rulemaking, would other carriers subject to this relationships freeze feel the need to seek relief of the freeze through the waiver process? Are there particular facts or circumstances that we should consider in assessing whether a carrier has demonstrated sufficient “good cause” to justify a waiver under our rules that would allow a carrier to unfreeze its category relationships?

36. We also seek input on whether there is any reason to allow carriers not currently subject to the category relationships freeze to elect to freeze their categories. We ask carriers to provide detailed information about any costs they encounter in categorizing their regulated costs and revenues as well as information on how their category relationships have changed over time. These carriers should address whether the benefits from eliminating those administrative costs would outweigh any loss in the accuracy of separations results that would arise from freezing their category relationships. Further, we seek input on what base period of data carriers should use for their calculations if we allow them to elect to freeze their category relationships.

37. If we allow carriers not currently subject to the category relationships freeze to elect to freeze their categories, what opportunities should we provide for unfreezing them going forward? What procedures should we adopt if we decide to allow changes in elections? For instance, should we allow carriers to change their elections on a periodic basis—for example, every three years? Finally, we seek comment on whether we should allow carriers that opt to unfreeze their category relationships the option to update those category relationships and then refreeze them immediately or at some later date.⁶⁷ What would be the costs and benefits to the carriers and to the public of allowing carriers to unfreeze and then refreeze their category relationships?

C. Changes to Other Aspects of the Separations Freeze

38. If we adopt our proposal to extend the separations freeze, are there any other aspects of the freeze we should modify? We ask commenters to identify any specific problems with the freeze as well as potential solutions.

39. In the *2001 Separations Freeze Order*, the Commission required that all rate-of-return incumbent LECs apportion their categorized costs using their allocation factors for the year 2000. Should we allow, or require, rate-of-return LECs to reset their jurisdictional allocation factors using current data? We ask commenters to describe in detail the benefits and costs of such actions. We invite comment on whether we should allow, or require, carriers to refreeze their jurisdictional allocation factors once they are reset. We also seek comment on how any reset of jurisdictional allocation factors should be implemented, including providing information regarding timeframes, deadlines, period of data to be used, and any other related details.

D. Effect on Small Entities

40. We seek comment on the effect that our proposals to extend the separations freeze and to allow rate-of-return carriers to opt out of the category relationships freeze would have on small entities, and whether any rules that we adopt should apply differently to small entities. We seek comment on the costs and burdens of these proposals on small incumbent LECs and whether these proposals would disproportionately affect specific types of carriers or ratepayers. We also seek input on the effect, if any, on small entities of any other aspects of the separations freeze that we inquire about in this *Further Notice*.

⁶⁵ *2001 Separations Freeze Order*, 16 FCC Rcd at 11407, para. 52.

⁶⁶ See *supra* para. 15.

⁶⁷ See, e.g., ITTA May 24, 2017 Comments at 10-11.

IV. PROCEDURAL MATTERS

A. Deadlines and Filing Procedures

41. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document in CC Docket No. 80-286. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁶⁸

- Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary: Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities*: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

42. *Ex Parte Requirements*. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁶⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic

⁶⁸ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

⁶⁹ 47 CFR § 1.1200 *et seq.*

comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Initial Regulatory Flexibility Analysis

43. Pursuant to the Regulatory Flexibility Act (RFA),⁷⁰ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this Notice of Proposed Rulemaking. The text of the IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comment on the Notice of Proposed Rulemaking. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).⁷¹

C. Paperwork Reduction Act

44. This document may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.⁷²

D. Contact Person

45. For further information about this proceeding, please contact Marv Sacks, FCC Wireline Competition Bureau, Pricing Policy Division, 445 12th Street, S.W., Washington, D.C. 20554, (202) 418-2017, marvin.sacks@fcc.gov.

V. ORDERING CLAUSES

46. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i) and (j), 205, 220, 221(c), 254, 303(r), 403, and 410 of the Communication Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 205, 220, 221(c), 254, 303(r), 403, 410, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. § 1302, that this Further Notice of Proposed Rulemaking IS ADOPTED.

47. IT IS FURTHER ORDERED, pursuant to section 220(i) of the Communications Act, 47 U.S.C. § 220(i), that notice be given to each state commission of the above rulemaking proceeding, and that the Secretary SHALL SERVE a copy of this Further Notice of Proposed Rulemaking on each state commission.

⁷⁰ See 5 U.S.C. § 603.

⁷¹ See 5 U.S.C. § 603(a).

⁷² See 44 U.S.C. § 3506(c)(4).

48. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Draft Proposed Rules for Public Comment

For the reasons set forth above, the Federal Communications Commission proposes to amend Part 36 of Title 47 of the Code of Federal Regulations as follows:

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 is amended to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i) and (j), 205, 220, 221(c), 254, 303(r), 403, 410, and 1302 unless otherwise noted.

Subpart A – General

2. Amend § 36.3 by revising paragraph (b) to read as follows:

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

* * * * *

- (b) Effective July 1, 2001, through December 31, 2033, local exchange carriers subject to price cap regulation, pursuant to § 61.41 of this chapter, 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 December 31, 2033, 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 paragraph (b) of this section. Such election must be made prior to July 1, 2001. Any local exchange carrier that elected to be subject to paragraph (b) of this section may withdraw from that election by notifying the Commission prior to March 1, 2019 of its intent to withdraw from that election, and that withdrawal will be effective as of July 1, 2019. Any local exchange carrier choosing to withdraw from its election under paragraph (b) of this section that participates in an Association tariff, pursuant to § 69.601 et seq., also shall notify the Association prior to March 1, 2019, of such intent. Subject to that one exception, local exchange carriers that previously elected to become subject to paragraph (b) shall not be eligible to withdraw from such regulation for the duration of the freeze.

* * * * *

2. Amend § 36.126(b)(5) by removing the date “June 30, 2014” and adding in its place “December 31, 2033.”

3. In 47 CFR part 36, remove the date “December 31, 2018” and add in its place everywhere it appears the date “December 31, 2033” in the following places:

- a. Section 36.3(a), (c), (d) introductory text, and (e);
- b. Section 36.123(a)(5) and (6);
- c. Section 36.124(c) and (d);
- d. Section 36.125(h) and (i);
- e. Section 36.126(b)(6), (c)(4), (e)(4), and (f)(2);
- f. Section 36.141(c);
- g. Section 36.142(c);
- h. Section 36.152(d);
- i. Section 36.154(g);
- j. Section 36.155(b);
- k. Section 36.156(c);
- l. Section 36.157(b);
- m. Section 36.191(d);
- n. Section 36.212(c);
- o. Section 36.214(a);
- p. Section 36.372;
- q. Section 36.374(b) and (d);
- r. Section 36.375(b)(4) and (5);
- s. Section 36.377(a) introductory text, (a)(1)(ix), (a)(2)(vii), (a)(3)(vii), (a)(4)(vii); (a)(5)(vii), and (a)(6)(vii);
- t. Section 36.378(b)(1);
- u. Section 36.379(b)(1) and (2);
- v. Section 36.380(d) and (e);
- w. Section 36.381(c) and (d); and
- x. Section 36.382(a).

APPENDIX B**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Further Notice of Proposed Rulemaking (Further Notice)*. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The vast majority of the Part 36 jurisdictional separations rules were last updated more than 30 years ago. In 1997, the Commission initiated a proceeding to comprehensively reform those rules in light of the statutory, technological, and marketplace changes that had affected the telecommunications industry.⁴ In 2001, the Commission, pursuant to a recommendation by the Federal-State Joint Board on Jurisdictional Separations (Joint Board), froze the Part 36 separations rules for a five-year period beginning July 1, 2001, or until the Commission completed comprehensive separations reform, whichever came first.⁵

3. The Commission has extended the freeze seven times, with the most recent extension set to expire on December 31, 2018.⁶ The Commission would prefer not to move forward on separations reform without a Joint Board recommendation on an approach to such reform, and the Board is not close to reaching a recommendation. Therefore, as a practical matter, completion of comprehensive separations reform by the expiration of the freeze on December 31, 2018 is highly unlikely, and the Commission must choose between extending the separations freeze and allowing long-unused separations rules to take effect on January 1, 2019.

4. Because the Commission expects that the benefits of further extending the jurisdictional separations freeze likely outweigh the costs of allowing it to end, the Commission in this *Further Notice* proposes to extend the freeze for 15 years, and invites comment on whether a shorter extension would be preferable. The Commission also seeks comment on whether it should alter the scope of the referral to

¹ See 5 U.S.C. § 603. 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).

² See 5 U.S.C. § 603(a).

³ See 5 U.S.C. § 603(a).

⁴ See *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22126, para. 9 (1997) (*1997 Separations Notice*).

⁵ *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382, 11393–408, paras. 18-55 (2001) (*2001 Separations Freeze Order*).

⁶ *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 32 FCC Rcd 4219 (2017); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 29 FCC Rcd at 6470 (2014); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 27 FCC Rcd 5593 (2012); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 26 FCC Rcd 7133 (2011); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 25 FCC Rcd 6046 (2010); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 24 FCC Rcd 6162 (2009); *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, 5517, 5523, paras. 1, 16 (2006).

the Joint Board regarding comprehensive separations reform. The Commission also proposes to permit rate-of-return carriers that elected to freeze their category relationships in 2001 to opt out of this freeze, and it seeks comment on that proposal.

B. Legal Basis

5. The legal basis for the *Further Notice* is contained in sections 1, 4(i) and (j), 205, 220, 221(c), 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and (j), 205, 220, 221(c), 254, 303(r), 403, 410, and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. § 1302.

C. Description and Estimate of the Number of Small Entities to Which Rules May Apply

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁹ A “small business concern” is one which: (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).¹⁰ Nationwide, there are 28.8 million small businesses, according to the SBA.¹¹

7. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers.¹² Under the SBA definition, a carrier is small if it has 1,500 or fewer employees.¹³ According to the FCC’s Telephone Trends Report data, 1,307 incumbent local exchange carriers (LECs) reported that they were engaged in the provision of local exchange services.¹⁴ Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.¹⁵ Consequently, the Commission estimates that most incumbent LECs are small entities that may be affected by the rules and policies addressed in this *Further Notice*.

⁷ See 5 U.S.C. § 603(b)(3).

⁸ See 5 U.S.C. § 601(6).

⁹ See 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.”

¹⁰ See 15 U.S.C. § 632.

¹¹ See SBA, Office of Advocacy, *Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?* (June 2016), https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

¹² See 13 CFR § 121.201 (NAICS code 517110).

¹³ See *id.*

¹⁴ See *Trends in Telephone Service*, FCC, WCB, Industry Analysis and Technology Division, at 5-5, Tbl. 5.3 (Sept. 2010), <https://docs.fcc.gov/public/attachments/DOC-301823A1.pdf>.

¹⁵ *Id.*

8. We have included small incumbent LECs in this RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”¹⁶ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.¹⁷ Because the Commission’s proposals concerning the Part 36 separations process will affect all rate-of-return incumbent LECs providing interstate services, some entities employing 1,500 or fewer employees may be affected by the proposals made in this *Further Notice*. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission’s analyses and determinations in other, non-RFA contexts.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

9. If a rate-of-return carrier were allowed to opt out of the category relationships freeze, it would be able to update its Part 36 category relationships annually by doing new cost studies and then adjusting its rates. The *Further Notice* elicits comment on whether rates based on the updated relationships should take effect with the July 1, 2019 tariff filing. If so, as part of that filing, rate-of-return carriers will need to explain the new studies in the Description & Justification section and submit the results of these studies in their tariff review plans.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

10. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.¹⁸

11. The jurisdictional freeze has eliminated the need for all incumbent LECs, including incumbent LECs with 1,500 employees or fewer, to complete certain annual separations studies that otherwise would be required by the Commission’s rules. Thus, an extension of this freeze would avoid increasing the administrative burden of regulatory compliance for rate-of-return incumbent LECs, including small incumbent LECs.

12. Presently, rate-of-return carriers in about 45 study areas operate under a category relationships freeze. When the Commission granted rate-of-return carriers the opportunity to elect the category relationships freeze, it specified the freeze would be an interim, “transitional measure” lasting no more than five years.¹⁹ But, the freeze has now lasted 17 years, and carriers that elected it are prohibited from withdrawing from that election.²⁰ The Commission proposes to grant these carriers the opportunity to opt out of this freeze. The Commission recognizes that the size and investment patterns of these carriers vary widely, and implementation of this proposal would enable an individual carrier to decide for

¹⁶ See 5 U.S.C. § 601(3).

¹⁷ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

¹⁸ See 5 U.S.C. § 603(c)(1)-(4).

¹⁹ *2001 Separations Freeze Order*, 16 FCC Rcd at 11383, 11392, paras. 2, 17.

²⁰ See 47 CFR § 36.3 (carriers electing the category relationships freeze are not eligible to withdraw their elections).

itself if the economic benefits of unfreezing its category relationships outweigh any costs.

13. The Commission seeks comment on the effect of its proposals on small entities, and whether any rules that we adopt should apply differently to small entities. We direct commenters to consider the costs and burdens of these proposals on small incumbent LECs and whether the proposals would disproportionately affect specific types of carriers or ratepayers.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

14. None.