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

COMMENTS OF THE SMALL COMPANY COALITION

The Small Company Coalition (SCC), a national group of rural telecommunications and broadband providers, hereby offers these comments in response to the Federal Communications Commission's (FCC) Further Notice of Proposed Rulemaking (FNPRM) in which it is proposed to extend the freeze of jurisdictional separations category relationships and cost allocation factors in Part 36 of the FCC's rules for three years (through June 30, 2017).[1] All SCC member companies are rate-of-return (RoR) regulated rural local exchange carriers and are thus, in one way or another, directly affected by any decisions made in this proceeding.

I. INTRODUCTION

Overall, SCC supports the FCC's proposal to freeze the jurisdictional separations category relationships and cost allocation factors for an additional time beyond the current end date, June 30, 2014. SCC also generally supports the FCC's proposal to direct the Wireline Competition Bureau (Bureau) to open a filing window for RoR-regulated incumbent local exchange carriers (ILECs) to file waiver requests to unfreeze their jurisdictional separations category relationships.

As the FCC noted, the Separations Joint Board is currently considering comprehensive changes to jurisdictional separations rules.[2] During the time the Joint Board has been considering these changes, the FCC adopted the *USF/ICC Transformation Order*[3], which fundamentally altered the way RoR regulated carriers recover the costs of providing certain

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[1] *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, Further Notice of Proposed Rulemaking (FCC14-27, rel. March 27, 2014) (*FNPRM*)
[2] *Id.*, at 9
[3] Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al, FCC 11-161 (rel. November 18, 2011) (*USF/ICC Transformation Order*)

services. As a result, the prudent course of action is to continue the separations freeze beyond its current July 1, 2014 end date. However, in order to provide RoR carriers with as much predictability as possible, and to avoid what could be a major disruptive action that would affect companies already dealing with the known impacts and trying to identify and predict the unknown effects of the *USF/ICC Transformation Order*, the SCC recommends the separations freeze be extended through the end of the ICC transition to bill and keep - currently scheduled to be July 1, 2020. The SCC also recommends the Commission move forward with its "filing window" proposal quickly, by first addressing the outstanding separations category freeze petitions, and then adopting a process that will allow for any RoR ILEC to expeditiously unfreeze their separations categories.

II. EXTENDING THE SEPARATIONS FREEZE

The separations factor and category freeze has been extended numerous times since first enacted, covering a period of thirteen years.[4] The original rationale for adopting and then extending the freeze still holds - namely providing RoR carriers a certain amount of stability and regulatory certainty while the Joint Board determines how to comprehensively overhaul the separations rules. Once the *USF/ICC Transformation Order* was adopted, the Joint Board's task become more difficult - a fact noted in the last separations freeze extension order: "the issues at stake are quite complex, and are affected by ongoing reform efforts, such as reform of universal service and intercarrier compensation."[5] Nothing in this regard has changed since the 2012 Separations Freeze Extension Order, and much has indeed become more complicated. Thus, the reasons for extending the separations freeze in 2012 argue for an additional extension beyond July 1, 2014.

In addition, allowing the previously frozen separations factors to revert to pre-2001 separations rules could cause some very immediate and costly impacts. First, as a consequence of the reforms adopted in the *USC/ICC Transformation Order*, cost recovery for a substantial portion of RoR ILEC interstate access costs has been in essence frozen.[6] The frozen portion of RoR ILEC switched access cost recovery was, of course, based on the frozen separations factors

[4] *FNPRM*., at 8
[5] Report and Order, CC Docket No. 80-286 (FCC 12-49), rel. May 8, 2012, at 2
[6] See *USF/ICC Transformation Order* at 851

and, for some, frozen cost category relationships. To end the freeze effective July 1, 2014 will have disastrous consequences on the entire industry, including, more than likely, the Commission's CAF ICC fund. Second, in order for RoR ILECs to comply with the newly unfrozen separations amounts, substantial time, efforts, and resources would be involved. As the Commission noted, not extending the freeze "would require substantial training and investment."[7] Thus, the question to be asked is what the effect on RoR RLECs of not extending the freeze is, and the SCC maintains that such a cost would be enormous.

The question now becomes for how long the freeze should be extended. The Commission proposes a three year extension to June 30, 2017, which at least the state members of the Joint Board support.[8] Since one of the purposes of extending the separations freeze for thirteen years is to "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"[9] the Commission should consider extending the freeze even further. The SCC's members have experienced an unprecedented level of regulatory uncertainty and burden since the *USF/ICC Transformation Order's* release.[10] This uncertainty and burden will likely not decrease as time goes on, but establishing at least one source of certainty (separations factors) during this time would greatly benefit SCC's members and all RoR ILECs. Therefore, the SCC recommends the Commission extend the jurisdictional separations freeze to coincide with the transition to bill and keep for terminating switched access rates - July 1, 2020 - subject to the discussion below regarding the optional separations category freeze.

III. COST CATEGORY RELATIONSHIPS

The jurisdictional separations freeze affects two main items: (1) allocation factors, which were frozen for all RoR carriers, and (2) cost categories, which were frozen on a voluntary basis by fewer than 100 RoR ILECs in 2001.[11] Cost categories relate to the assignment of regulated costs to various categories, such as central office equipment (COE) category 3 (local switching)

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[7] *FNPRM* at 12
[8] See Letter from John D. Burke to Jessica A. Rosenworcel, filed March 31, 2014 in CC Docket No. 80-286
[9] *FNPRM* at 6
[10] *See e.g.*, Comments of the Small Company Coalition, filed March 31, 2014 in GN Docket No. 14-25 (FCC Process Reform)
[11] *FNPRM* at 15

and COE category 4.13 (subscriber circuit equipment). These categories in large part control how the RoR ILEC's regulated costs are allocated between interstate and intrastate jurisdictions using the (now frozen) separations factors. Thus, much in the Part 36 separations process, as well as the Part 69 access charge process, hinges on these cost categories.

As noted, very few of the "fewer than 100" RoR ILECs that elected to freeze cost categories have filed petitions seeking to unfreeze them. However, this lack of interest or activity in filing such waiver petitions should not be taken as sufficient evidence that the category freeze elected by some or all of these RLECs is not producing adverse effects. As the Commission succinctly stated, RoR ILECs "that elected to freeze their cost category relationships did so with the expectation that the freeze would likely last only five years. Instead, the freeze has remained in effect for 13 years."[12] Additionally, the *USF/ICC Transformation Order's* substantial reforms to the universal service and intercarrier compensation regimes (impacts felt at the federal and state levels) served to place additional burden on a decision that has lasted over 2.5 times as long as initially envisioned. Clearly, a process is needed to provide RoR ILECs that elected to freeze cost categories a simple, fast, and inexpensive way to unfreeze these categories.

The Commission proposes to address this situation by directing the Wireline Competition Bureau to provide RoR ILECs that elected to freeze separations cost categories a specific opportunity, or filing window, to request approval to unfreeze the cost category relationships.[13] This process would apparently operate as normal, where a RoR ILEC would prepare and file a waiver petition, which the Bureau would then review and decide the final dispensation - approve or deny. While the SCC appreciates the attention paid to this very real and in many cases costly issue, the Commission should go further as outlined below.

First, the Bureau should immediately address the two pending petitions to unfreeze cost category relationships.[14] Then, the SCC recommends the Commission allow all remaining RoR ILECs that elected to freeze cost category relationships a one-time opportunity, during a clearly-defined filing window, to unfreeze their separations categories. This opportunity should involve a brief statement by the requesting RoR ILEC, and should not require much, if any, analysis by

[12] *Id*., at 16
[13] *Id*., at 17
[14] *Id*. See also footnote 38

the Bureau. In fact, considering the length of time these categories have been frozen, and the transformative changes that have taken place in the industry since 2001, SCC suggests such elections should be deemed approved upon a minimal examination of the RoR ILEC's statement.

As an alternative to SCC's proposal above, the Commission should direct the Bureau to process any waiver petitions received during the filing window on an expeditious basis. Furthermore, the Commission should adopt a timeline under which the Bureau must process and rule upon these petitions, which would provide affected RoR ILECs with additional certainty as to outcome and regulatory stability as they continue to adapt to the post-*USF/ICC Transformation Order* world.

IV. CONCLUSION

The SCC supports an extension of the current separations factor freeze beyond July 1, 2014. However, the Commission should consider extending the freeze beyond the proposed 3 years, and instead extend it to coincide with the final movement to bill and keep for certain RoR ILEC intercarrier compensation rates - July 1, 2020. SCC also supports the intent behind adopted a filing window for those carriers that elected to freeze cost category relationships, but recommends a more streamlined and certain process where a brief "election to unfreeze" statement is approved upon very minimal review.

Respectfully Submitted,

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April 16, 2014