

TC -3 Resolution on FCC Release of Notice of Proposed Rulemaking on Separations

Whereas one of the complexities of telecommunications regulation is that carriers use the same plant to provide jurisdictionally intrastate services, jurisdictionally interstate services, and nonregulated services;

Whereas as long as dual jurisdictional regulation remains, some means must exist to virtually divide the company into an intrastate component and an interstate component;

Whereas for well over a decade, state commissions and the FCC have agreed that the separations process, used for decades to allocate these network costs between state and federal jurisdictions, must be reformed to allocate and recover those costs in an equitable and reasonable manner, and further agreed that the reforms adopted to recover these network costs must reflect the real-world use of our networks;

Whereas in 2001, the FCC's solution to the increased reliance on the nations' networks to provide emerging services was to impose a short-term "interim freeze" of the allocation factors set to expire in 2006;

Whereas the solution was ordered *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board, Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, Docket No. 80-286, 16 FCC Rcd 11382 (2001)(Freeze Order), which describes the components of the freeze in detail;

Whereas there is a concern that the FCC's perpetuation of an "interim freeze" may be affecting the deployment of broadband in the states by allocating approximately 75 percent of a typical telecommunications' carrier's loop costs and related expenses to the states;

Whereas this "interim freeze" of the "75/25 split" was originally designed for voice services and was supported by states based on the FCC's commitment to "comprehensive, permanent reform" of the jurisdictional separations process expected to occur during the five- year period;

Whereas the FCC has not addressed the need for comprehensive reform of separations in general and the "75/25 split" in particular;

Whereas we are concerned that State members of the Federal State Joint Board proposed solutions to this cost, revenue, and expense misalignment have not been given adequate attention by the FCC;

Whereas Commissioner O'Reilly, commenting in part on state proposals on comprehensive reform, stated in his February concurrence to a related successfully concluded Joint Board referral: "I have come to conclude that the viewpoints are so vastly different on this complex issue that finding commonality is not going to be possible in the near term. I have notified the Chairman of such and recommended that the Commission immediately pursue a longer extension of the current freeze than what has been done in the past";

Whereas Commissioner O'Reilly also suggested a 15-year extension of the 17-year old "interim freeze;"

Whereas a more transparent approach would be for the FCC to extend the "interim freeze" two more years to permit additional comment on the State members' recommendations;

Whereas commenters in Docket 82-86 continue to agree that the "interim freeze" was never intended to be permanent;

Whereas the FCC continues to classify increasing amounts of carrier revenues as interstate, effectively leaving the states stranded with the cost recovery for 75 percent of the network, despite the fact that far more network costs are interstate in nature, and thus, should be recovered through interstate rates;

Whereas this cross-subsidization of interstate services arising from the ongoing misallocation of network costs under this "75/25 split" hurts American consumers by suppressing the deployment of broadband, which, in turn, exacerbates the digital divide in rural and urban areas; *and*

Whereas this misallocation means that the FCC's estimate of the scope of the cost of deploying a broadband network and the FCC's support of such deployment is massively understated; *now, therefore be it*

Resolved that the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2018 Summer Policy Summit in Scottsdale, Arizona, states that to make informed decisions, the Joint Board must make every effort to gather facts concerning network and accounting trends within the telecommunications industry; *and be it further*

Resolved that even if an extension of the current freeze is necessary, it should not last longer than two years, and any new freeze should be adopted only by administrative rule following a Notice of Proposed Rulemaking, and only after meaningful consultation with the Joint Board, as anticipated by 47 U.S.C. § 410(c) and the Freeze Order; *and be it further*

Resolved that the FCC should consider participating in meaningful Joint Board consideration of the following additional issues:

1. Whether changes in plant, services, technologies, and jurisdictional changes (such as the treatment of Broadband Internet Access Service and core broadband networks) require separations changes, possibly including modifications to the 75-25 fixed factor and usage factors;
2. Whether separations adjustments (and accounts) are needed to record properly, revenues and costs for wholesale services, including reciprocal compensation and unbundled elements;
3. Whether states that exercise Part 64 authority to exclude carrier plant or expenses for non-regulated services should calculate separations factors;

4. Whether new measurement methodologies can provide useful information regarding how separations reform should occur;
5. How new companies that do not have a pre-freeze usage history should separate their costs during the freeze; and
6. Whether the present method of allocating and distributing funds for Joint Board meetings should be changed to be more effective.

Sponsored by the Committee on Telecommunications.

Adopted by the NARUC Board of Directors on July 18, 2018.