

STATE MEMBERS
FEDERAL STATE JOINT BOARD ON SEPARATIONS
1101 Vermont Avenue, NW, Suite 401
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October 11, 2024

Chairwoman Jessical Rosenworcel
Office of the Chairwoman

Commissioner Geoffrey Starks
Chair, Federal State Joint Board on Separations

Commissioner Anna Gomez
Member, Federal State Joint Board on Separations

Commissioner Nathan Simington
Member, Federal State Joint Board on Separations

Federal Communications Commission
45 L Street, NE.
Washington, D.C. 20554

Re: In the Matter of Jurisdictional Separations and Referral to the Federal State Joint Board, CC Docket No. 80-286 – State Members’ Recommendation

Chairwoman Rosenworcel, Joint Board Chair Starks, Commissioner Gomez and Commissioner Simington:

The State members appreciate the commitment in ¶ 19 of the July 1, 2024 *Further Notice of Proposed Rulemaking and Order (FNPRM)* to “engage with the Joint Board regarding this proposed extension”¹ and we agree the commission should maintain the “prior referrals” to the Joint Board on comprehensive review. *Id.* We also acknowledge and appreciate the outreach from Joint Board Chair Starks’ office and, in particular, from Terri Natoli, Deputy Bureau Chief in the Wireline Competition Bureau.

Obviously, some extension of the freeze is required for, at a minimum, the reasons articulated by the Commission in ¶ 12 of the *FNPRM*.² The question is how long of an extension is appropriate.

¹ *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, Further Notice of Proposed Rulemaking, FCC 18-99, CC Docket No. 80-286, 89 Fed. Reg. 58692 at ¶ 19, mimeo at pages 8 - 9 (July 19, 2024), available online at: <https://docs.fcc.gov/public/attachments/FCC-24-71A1.pdf>.

² *Id.* at ¶ 19, which states, *inter alia*, that: “[t]he proposal to extend the freeze through December 31, 2030, would allow the Joint Board to consider next steps in addressing separations reform. This Joint Board has quite recently seated several new members who are just beginning their opportunity to delve into the complicated issues they need to grapple with in considering reform measures. In short the new Board will need time to develop a meaningful recommendation. The combination of these recent changes and the procedural process necessary for any recommendation render it unlikely that the Joint Board could issue a recommended decision on comprehensive reform and that the Commission could consider that recommendation, and then act upon it before the current freeze expires. Section 410(c) contemplates a Joint Board recommendation before the Commission moves forward on comprehensive separations reform.” (footnotes omitted)..

NARUC, in its reply comments, supported “a two-year extension or any longer extension endorsed by the majority of the members of the Separations Joint Board.”³ The four state members do constitute a majority of the joint boards. In addition, all three FCC Commissioners on the Joint Board, including the Chair, voted to propose a six year extension. The State members have discussed the extension and agree with the federal members of the board that a six-year extension is appropriate.

It is important to note that this freeze extension is a change in the Part 36 rules and under both the explicit text of the statute and existing precedent, the FCC is required to seek a recommended decision before altering the Part 36 rules. Practically, as outlined in NARUC’s comments,⁴ with all the freeze extensions, either the full joint board or a majority of the Joint Board filed a recommendation decision/recommendation, or as in the case of the last freeze extension, the majority of the board agreed via deliberations to support of the freeze extension. As NARUC notes in its comments at page 10:

Given that the April 2006 Joint Board Letter specifically recommended a three-year extension, there was no legal (or logical) basis for anyone to challenge this assertion [that no referral to change the rules to extend the freeze was necessary]. Because there has been subsequent acquiescence by the majority of Joint Board members to every subsequent freeze, there has never been a basis to challenge [the lack of a referral] {emphasis added}

State members take no position on whether the one-time category unfreeze proposals should be implemented. However, the law is clear that such unfreeze proposals would be a change to the Part 36 rules and would thus also require a recommendation/agreement from a majority of the Joint Board before they could be legally implemented.

Respectfully Submitted:

Mary Pat Regan Commissioner
State Chair, FCC-State Separations Joint Board
Kentucky Public Service Commission

Karen Charles Commissioner
Member, FCC-State Separations Joint Board
Massachusetts Department of Telecommunications and Cable

Maida J. Coleman Commissioner
Member, FCC-State Separations Joint Board
Missouri Public Service Commission

Steven M. DeFrank Chairman
Member, FCC-State Separations Joint Board
Pennsylvania Public Utility Commission

cc: *Narda Jones, Chief of Staff, Office of the Chairwoman*
Greg Watson, Chief of Staff, Office of Commissioner Carr
Justin Faulb, Chief of Staff & Wireline Legal Advisor, Office of Commissioner Starks
Erin Boone, Chief of Staff & Wireless Advisor, Office of Commissioner Simington
Deena Shetler Chief of Staff & Legal Advisor for Media & International, Office of Commissioner Gomez
Terri Natoli, Deputy Bureau Chief in the Wireline Competition Bureau.

³ *Reply Comments of the National Association of Regulatory Utility Commissioners*, filed September 3, 2024 in the proceeding captioned *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, Further Notice of Proposed Rulemaking, CC Docket No. 80-286. (NARUC’s September 2024 comments are available online at: <https://www.fcc.gov/ecfs/document/10926270871273/1>)

⁴ *Id.* at pages 7 – 11.