



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

**[CC Docket No. 80-286; FCC 17-22]**

Jurisdictional Separations and Referral to the Federal-State Joint Board

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:**

The Commission proposes a further eighteen month extension of the current freeze of category relationships and allocation factors for price cap carriers and all allocation factors for rate-of-return carriers and seeks comment on several issues regarding the potential effects of the freeze extension.

**DATES:** Comments are due on or before **[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Reply comments are due on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Federal Communications Commission, 445 12<sup>th</sup> St., Washington, DC 20554

**FOR FURTHER INFORMATION CONTACT:** Rhonda Lien, Wireline Competition Bureau, Pricing Policy Division at (202) 418-1540 or at [rhonda.lien@fcc.gov](mailto:rhonda.lien@fcc.gov)

**SUPPLEMENTARY INFORMATION:** This a summary of the Commission Further Notice of Proposed Rulemaking released on March 20, 2017. The full text of this document may be accessed at the following internet address: [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-17-22A1.docx](https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-22A1.docx)

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. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). Section 1.415(b) of the Commission's rules does not establish a minimum time period for the Commission to receive comments on proposed rules. Rather, the rule states that a "reasonable time will be provided for submission of comments." In this proceeding, because the current separations freeze will otherwise expire on June 30, 2017, and because we expect our proposal to extend the freeze will not generate controversy, we find that it is reasonable to allow 14 days after Federal Register publication for the filing of comments and seven days after that for the filing of any reply comments.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- 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 12<sup>th</sup> 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 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

Accessible Formats. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

Ex Parte Presentations. The proceeding this Further Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules. 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 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.

We propose to extend the existing separations freeze for an additional eighteen months while we work to reform the separations rules. As with our prior freezes, we propose that the freeze extension be implemented as described in the 2001 Separations Freeze Order. Specifically, we propose to direct rate-of-return ILECs to continue to use the same frozen jurisdictional allocation factors, and the same frozen category relationships if they had opted previously to freeze those relationships. We seek comment on this proposal. Are there adjustments we should make on a going-forward basis to the current freeze?

The policy changes adopted by the Commission in recent years, particularly those arising from the Commission's fundamental reform of the high cost universal service support program and intercarrier compensation systems in the USF/ICC Transformation Order and from our recent changes to the Part 32 accounting rules, will significantly affect the Commission's and the Joint Board's analysis of interim and comprehensive separations reform. We believe that extending the freeze for eighteen months will allow the Joint Board sufficient time to consider the impact of our recent reforms on the separations rules and will allow us the opportunity to fashion a Notice of Proposed Rulemaking that benefits from the Joint Board's consideration of how best to

approach separations reform. We seek comment on this proposed path forward, and invite commenters to identify alternative approaches.

One significant benefit of extending the freeze while we undertake reform will be to provide stability and regulatory certainty for ILECs during the reform process. As the Commission has observed, if the frozen category relationships and allocation factors were unfrozen, ILECs would be required to reinstitute their separations processes that have not been used since the inception of the freeze almost sixteen years ago. Reinstating these requirements would require substantial training and investment. Moreover, given the significant changes in technologies and investment decisions, as well as changes in regulatory approaches at both the state and federal levels, the existing separations rules are likely outdated. We anticipate that extending the jurisdictional separations freeze would provide rate-of-return ILECs with certainty in the near future as they continue apportioning costs as they have since the 2001 Separations Freeze Order, and would be preferable to re-imposing the burden of the separations rules. We seek comment on these other benefits or drawbacks to a continued freeze.

We also seek comment on the effect that our proposal to extend the 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 an extension on small ILECs and whether the extension would disproportionately affect specific types of carriers or ratepayers.

The Joint Board has a pending referral to consider broadly any appropriate changes to the separations rules. We will evaluate whether other discrete issues should be referred to the Joint Board. We anticipate that the Joint Board will meet in July 2017 to consider reform of the separations process. We expect to receive the Joint Board's recommendations for comprehensive separations reform within nine months thereafter, that is, in April 2018.

## **PROCEDURAL MATTERS**

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

**Initial Regulatory Flexibility Act Analysis.** As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this Further Notice of Proposed Rulemaking, of the possible significant economic impact on small entities of the policies and rules addressed in this document.

### **Need for, and Objectives of, the Proposed Rules**

In the 1997 Separations Notice, the Commission noted that the network infrastructure by that time had become vastly different from the network and services used to define the cost categories appearing in the Commission's Part 36 jurisdictional separations rules, and that the separations process codified in Part 36 was developed during a time when common carrier regulation presumed that interstate and intrastate telecommunications service must be provided through a regulated monopoly. Thus, the Commission initiated a proceeding with the goal of reviewing comprehensively the Commission's Part 36 procedures to ensure that they meet the objectives of the Telecommunications Act of 1996 (1996 Act). The Commission sought comment on the extent to which legislative changes, technological changes, and market changes might warrant comprehensive reform of the separations process. More than eighteen years have elapsed since the closing of the comment cycle on the 1997 Separations Notice, and more than fifteen years have elapsed since the imposition of the freeze. The industry has experienced

myriad changes during that time, including reform of universal service and intercarrier compensation; therefore, we ask for comment on the impact of a further extension of the freeze. The purpose of the proposed extension of the freeze is to ensure that the Commission's separations rules meet the objectives of the 1996 Act, and to allow the Commission additional time to consider changes that may need to be made to the separations process in light of changes in the law, technology, and market structure of the telecommunications industry.

### **Legal Basis**

The legal basis for the Further Notice of Proposed Rulemaking is contained in sections 1, 2, 4(i), 201-205, 215, 218, 220, and 410 of the Communications Act of 1934, as amended.

### **Description and Estimate of the Number of Small Entities to Which Rules May Apply**

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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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). Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

**Incumbent Local Exchange Carriers (incumbent LECs).** 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. Under the SBA definition, a carrier is small if it has 1,500 or

fewer employees. According to the FCC's Telephone Trends Report data, 1,307 incumbent LECs reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most incumbent LECs are small entities that may be affected by the rules and policies adopted herein.

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." 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. Because our proposals concerning the Part 36 separations process will affect all 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.

#### **Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

None.

#### **Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant**

#### **Alternatives Considered**

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.

As described above, more than fifteen years have elapsed since the imposition of the freeze, thus, we are seeking comment on the impact of a further extension of the freeze. We seek comment on the effects our proposals would have 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 an extension on small incumbent LECs and whether the extension would disproportionately affect specific types of carriers or ratepayers.

We believe that implementation of the proposed freeze extension would ease the administrative burden of regulatory compliance for LECs, including small incumbent LECs. The freeze has eliminated the need for all incumbent LECs, including incumbent LECs with 1,500 employees or fewer, to complete certain annual studies formerly required by the Commission's rules. If an extension of the freeze can be said to have any effect under the RFA, it is to reduce a regulatory compliance burden for small incumbent LECs by relieving these carriers from the burden of preparing separations studies and providing these carriers with greater regulatory certainty.

**Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules**

None.

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 comments on the Further Notice indicated on the first page of this document. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Further Notice of Proposed

Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

For further information regarding this proceeding, contact Rhonda J. Lien, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1520, or rhonda.lien@fcc.gov.

**ORDERING CLAUSES**

Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 201–205, 215, 218, 220, and 410 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201–205, 215, 218, 220, 410, this Further Notice of Proposed Rulemaking IS ADOPTED.

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.

IT IS FURTHER ORDERED that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR §§ 1.4(b)(1), 1.103(a), this Further Notice of Proposed Rulemaking SHALL BE EFFECTIVE on the date of publication in the Federal Register.

List of Subjects

Communications common carriers, Reporting and recordkeeping requirements; Telephone;

Uniform System of Accounts

**FEDERAL COMMUNICATIONS COMMISSION.**

**Marlene H. Dortch,**  
Secretary.  
Office of the Secretary.

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