

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Jurisdictional Separations and Referral to the) CC Docket No. 80-286
Federal-State Joint Board)
)

FURTHER NOTICE OF PROPOSED RULEMAKING AND ORDER

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TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION.....1
II. BACKGROUND.....2
III. FURTHER NOTICE OF PROPOSED RULEMAKING.....11
IV. ORDER.....20
V. PROCEDURAL MATTERS.....21
VI. ORDERING CLAUSES.....28
APPENDIX A – DRAFT PROPOSED RULES FOR PUBLIC COMMENT
APPENDIX B – INITIAL REGULATORY FLEXIBILITY ANALYSIS

I. INTRODUCTION

1. In this Further Notice of Proposed Rulemaking (Further Notice), we propose to extend, for an additional six years, the jurisdictional separations category relationships and cost allocation factors (together, separations rules) freeze for rate-of-return incumbent local exchange carriers (LECs). The current freeze extension is set to expire on December 31, 2024. Further extending this freeze will enable the Commission to continue to work with the Federal-State Joint Board on Jurisdictional Separations (Joint Board)1 to determine next steps in amending the separations rules in light of sweeping technological and regulatory changes since these rules were initially adopted.2 Due to the breadth and complexity of the separations rules, as well as their narrow applicability, the Commission has repeatedly

1 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 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). The vast majority of the jurisdictional separations rules were last updated more than 35 years ago and reflect the mix of services and the marketplace circumstances of that time. Id.

extended the freeze that was first adopted in 2001.³ Today, the rules remain applicable to only a limited and declining number of incumbent LECs that continue to rely on costs to calculate rates or universal service support.⁴ We expect that the benefits of further extending the separations rules' freeze likely outweigh the costs of allowing it to end. In the accompanying Order, we renew the existing outstanding referrals to the Joint Board that include both comprehensive and interim reform measures to the separations process.

II. BACKGROUND

2. *Jurisdictional Separations Process.* Rate-of-return incumbent LECs use their networks and other resources to provide both interstate and intrastate telecommunications services. To help prevent the recovery of the same costs from both the interstate and intrastate jurisdictions, the separations rules require that rate-of-return incumbent LECs divide their costs and revenues between the respective jurisdictions.⁵ 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 telecommunications services.⁶

3. Jurisdictional separations is the third step in a four-step regulatory cost-based rate-making process.⁷ 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.⁸ Second, the carrier divides the costs 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.⁹ Third, the carrier separates the regulated costs and revenues between the interstate and intrastate jurisdictions using the Commission's Part 36 jurisdictional separations rules.¹⁰ 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.¹¹

4. To comply with these rules, rate-of-return incumbent LECs must perform annual cost studies that include jurisdictional separations. After separating non-regulated from regulated costs and revenues, the cost study directly assigns or allocates the regulated costs and revenues to various Part 36 categories.¹² Amounts in categories that are used exclusively for interstate or intrastate communications are directly assigned to the appropriate jurisdiction.¹³ Amounts in categories that support both interstate

³ *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*).

⁴ See *infra* paras. 9-10.

⁵ See 47 CFR pt. 36.

⁶ See *id.* § 36.1(c) (positing that “[t]he fundamental basis on which separations are made is the use of telecommunications plant in [interstate and intrastate] operations”).

⁷ See *2001 Separations Freeze Order*, 16 FCC Rcd at 11384, para. 3.

⁸ 47 CFR pt. 32.

⁹ The Part 64 cost allocation rules are codified in 47 CFR §§ 64.901-904.

¹⁰ 47 CFR pt. 36.

¹¹ *Id.* pt. 69.

¹² See, e.g., 47 CFR § 36.3. In some instances, the incumbent LEC further disaggregates costs and revenues among subcategories. For convenience, this *Further Notice* uses “categories” to refer to both categories and subcategories.

¹³ 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).

and intrastate services are divided between the jurisdictions using allocation factors developed in accordance with Part 36 that reflect relative use or a fixed percentage.¹⁴

5. *Attempts at Separations Reform and Separations Freezes.* In 1997, recognizing that “changes in the law, technology, and market structure of the telecommunications industry” necessitated a thorough reevaluation of the jurisdictional separations process, the Commission initiated a proceeding to comprehensively reform the separations rules.¹⁵ At the same time, pursuant to section 410(c) of the Communications Act of 1934, as amended (the Communications Act),¹⁶ the Commission referred the matter of jurisdictional separations reform to the Joint Board for a recommended decision.¹⁷

6. In 2000, the Joint Board—comprised of both State and Federal members—issued a recommendation that the Commission freeze the Part 36 category relationships and jurisdictional allocation factors pending resolution of comprehensive reform.¹⁸ In 2001, the Commission adopted an order concluding that a freeze would stabilize the separations process pending reform by minimizing any impact of cost shifts on separations results due to circumstances—such as the growth of Internet usage, new technologies, and local competition—not contemplated by the rules.¹⁹ The Commission also determined that a freeze would simplify the separations process by eliminating the need for many separations studies until separations reform was implemented.²⁰ Accordingly, the Commission froze all Part 36 allocation factors and allowed rate-of-return carriers to voluntarily freeze their category relationships, enabling each carrier to determine whether such a freeze would be beneficial “based on its own circumstances and investment plans.”²¹ In 2009, the Commission made another referral, asking the Joint Board to consider comprehensive jurisdictional separations reform as well as “an interim adjustment of the current jurisdictional separations freeze.”²² In 2018, the Commission tasked the Joint Board with addressing two specific issues during the interim period pending comprehensive reform. These included exploring the possibility of amending separations rules to acknowledge that certain carriers are no longer bound by them, as well as updating existing recordkeeping requirements to align with the current

¹⁴ For example, for lines that are jointly used for local exchange service and exchange access for intrastate and interstate interexchange services, 25 percent of the loop costs are allocated to the interstate jurisdiction and 75 percent of the costs to the intrastate jurisdiction. *See id.* § 36.154(c). Otherwise, costs for telecommunications plant that is used jointly for state and interstate operations like tandem switching systems generally are allocated, or apportioned, based on minutes of use or a similar measure. *See id.* §§ 36.2(b)(3), 36.124.

¹⁵ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Notice of Proposed Rulemaking, 12 FCC Rcd 22120, 22122, para. 2 (1997) (*1997 Separations Reform NPRM and Referral*).

¹⁶ 47 U.S.C. § 410(c). Section 410(c) requires the Commission to “refer any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations, which it initiates pursuant to a notice of proposed rulemaking” to a Joint Board. *Id.* Section 410(c) further specifies that after such a referral, the Joint Board “shall prepare a recommended decision for prompt review and action by the Commission.” *Id.*

¹⁷ *1997 Separations Reform NPRM and Referral*, 12 FCC Rcd at 22124, para. 5.

¹⁸ *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Recommended Decision, 15 FCC Rcd 13160 (Fed.-State Jt. Bd. 2000) (*Joint Board Recommended Decision*).

¹⁹ *2001 Separations Freeze Order*, 16 FCC Rcd at 11389, para. 12.

²⁰ *Id.* at 11390, paras. 13-14.

²¹ *Id.* at 11393, paras. 18, 21 (citing *Joint Board Recommended Decision*, 15 FCC Rcd at 13172, para. 20). The Commission also froze all category relationships and allocation factors for price cap carriers. *Id.*

²² *2009 Separations Freeze Extension Order and Second Referral*, CC Docket No. 80-286, Report and Order, 24 FCC Rcd 6162, 6167, para. 15 (2009) (*2009 Separations Freeze Extension Order and Second Referral*).

applicability of separations rules.²³ The Joint Board has not to date submitted a recommended decision on comprehensive separations reform or on any interim adjustments.

7. The Commission specified that the 2001 freeze would last five years or until the Commission completed comprehensive separations reform, whichever came first.²⁴ The Commission also concluded that, prior to the expiration of the five-year period, the Commission would, in consultation with the Joint Board, determine whether the freeze period should be extended, explaining that “the determination of whether the freeze should be extended at the end of the five-year period shall be based upon whether, and to what extent, comprehensive reform of separations has been undertaken by that time.”²⁵

8. Since 2001, the Commission has extended the separations freeze eight times, for periods ranging from one year to six years, the most recent extension of which expires on December 31, 2024.²⁶ In repeatedly extending the freeze, the Commission has explained that the freeze would stabilize and simplify the separations process while the Joint Board and the Commission continued to work on separations reform.²⁷

9. *Declining Relevance of Jurisdictional Separations.* The jurisdictional separations rules no longer apply to the majority of carriers currently providing telecommunications services.²⁸ The separations rules were never applicable to wireless carriers, and in 2008, the Commission granted price cap incumbent LECs forbearance from the separations rules, leaving rate-of-return incumbent LECs as the only remaining carriers required to comply with the separations rules.²⁹ In addition, in 2018, the

²³ *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order and Waiver, 33 FCC Rcd 12743, 12758, paras. 42-43 (2018) (*2018 Separations Freeze Extension Order*).

²⁴ *2001 Separations Freeze Order*, 16 FCC Rcd at 11387-88, 11397, paras. 9, 29.

²⁵ *Id.* at 11397, para. 29.

²⁶ See *Jurisdictional Separations Reform 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) (*2006 Separations Freeze Extension Order and Further Notice*) (extending the initial separations freeze for three years, through June 30, 2009); *2009 Separations Freeze Extension Order and Second Referral*, 24 FCC Rcd at 6162, para. 1 (extending the separations freeze for one year through June 30, 2010); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 25 FCC Rcd 6046, para. 1 (2010) (*2010 Separations Freeze Extension Order*) (extending the separations freeze for one year through June 30, 2011); *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 26 FCC Rcd 7133, para. 1 (2011) (*2011 Separations Freeze Extension Order*) (extending the separations freeze for one year through June 30, 2012); *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 27 FCC Rcd 5593, para. 1 (2012) (*2012 Separations Freeze Extension Order*) (extending the separations freeze for two years through June 30, 2014); *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 29 FCC Rcd 6470, para. 1 (2014) (*2014 Separations Freeze Extension Order*) (extending the separations freeze for three years through June 30, 2017); *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 32 FCC Rcd 4219, para. 1 (2017) (*2017 Separations Freeze Extension Order*) (extending the separations freeze for 18 months through December 30, 2018); *2018 Separations Freeze Extension Order*, 33 FCC Rcd at 12744, para. 4.

²⁷ See, e.g., *2017 Separations Freeze Extension Order*, 32 FCC Rcd at 4223, paras. 10-11 (citing rural carrier associations comments); *2001 Separations Freeze Order*, 16 FCC Rcd at 11388-90, paras. 10, 12.

²⁸ Currently, out of 1,079 rate-of-return carriers, only about 247 carriers that receive cost-based Universal Service Fund (USF) support make the full use of separations to set end-user common line, business data services (BDS), and Consumer Broadband-Only Loop service rates, as well as to determine the level of USF support. Approximately 374 Alternative-Connect America Cost Model and Alaska Plan carriers use separations only for setting BDS rates.

²⁹ See 47 U.S.C. § 332(c)(3). In 2008, the Commission conditionally granted petitions for forbearance from the Part 36 jurisdictional separations rules to AT&T, BellSouth, Verizon, and Qwest. See, e.g., *Petition of AT&T Inc. for*

(continued....)

Commission offered rate-of-return carriers the option to receive fixed or model-based high-cost universal service support³⁰ with the ability to elect incentive regulation for their business data services (BDS).³¹ Carriers electing both model-based support and incentive regulation for BDS no longer need to engage in separation of their costs for any federal regulatory purpose, whether for universal service funding or rate-making.³² What is more, we expect additional rate-of-return carriers will take advantage of the Commission's latest Enhanced A-CAM program for universal service support and will also select to be subject to incentive regulation for BDS—thus, we expect the number of carriers that will be subject to the separations rules to decrease even further.³³

10. For carriers that remain subject to the separations rules, the separations process has increasingly limited application because of regulatory reforms by the Commission that remove the need to

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). 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), *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) (*Part 32 Reform Order and Referral to the Joint Board*).

³⁰ These carriers are referred to as fixed support carriers and include rate-of-return carriers receiving support based on the Alternative-Connect America Cost Model (A-CAM carriers), rate-of-return carriers receiving fixed support under the Commission's Alaska Plan, price cap affiliated rate-of-return carriers receiving support based on the Connect America Cost Model, and rate-of-return carriers that accept future offers of A-CAM support. *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers et al.*, WC Docket No. 17-144 et al., Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, 33 FCC Rcd 10403, 10404, para. 1 (2018) (*Rate-of-Return BDS Order*). Most recently, the Commission initiated its third offering of fixed, model-based A-CAM support, referred to as Enhanced A-CAM, that followed the A-CAM I and A-CAM-II support programs. *Expanding Broadband Service Through the A-CAM Program*, WC Docket Nos. 10-90 et al., Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60 (July 24, 2023) (*Enhanced A-CAM Order*).

³¹ See, e.g., *Rate-of-Return BDS Order*, 33 FCC Rcd at 10404, para. 1 (allowing rate-of-return carriers that receive model-based or other forms of fixed high cost universal service support to voluntarily elect to transition their BDS offerings out of rate-of-return regulation to incentive regulation). "Under th[is] framework . . . electing carriers will not be required to provide cost-based justifications for their BDS rates and will therefore no longer need to conduct annual cost studies to justify those rates." *Id.* at 10405, para. 4. This Order also provided that "[b]usiness data services rates for carriers accepting future offers of A-CAM support or otherwise transition away from legacy support mechanisms will be effective on July 1 in the year following their election." *Id.* at 10421-22, para. 44. Carriers receiving Enhanced A-CAM may also elect incentive regulation. "Pursuant to the *Rate-of-Return BDS Order*, Enhanced A-CAM recipients that have not already done so will also be eligible to move their business data services offerings to incentive regulation." *Enhanced A-CAM Order* at 39, para. 91.

³² Currently, 232 A-CAM carriers have elected incentive regulation for BDS. Moreover, apart from a handful of carriers performing sample cost studies, the separations rules do not apply to rate-of-return carriers that are "average schedule companies." At present, 226 companies participate in NECA's average schedule. These companies do not perform jurisdictional separations; they receive pool revenues, or settlements, from the National Exchange Carrier Association, Inc. for interstate telecommunications services based on a series of statistical formulas, approved by the Commission, that approximate the amounts received by a similar cost company. See 47 CFR § 69.606.

³³ See *Wireline Competition Bureau Authorizes 368 Companies in 44 States to Receive Enhanced Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 23-1025 (Oct. 30, 2023); *Enhanced A-CAM Order* at 39, para. 91.

engage in the separations process. For example, as part of comprehensive reform and modernization of the universal service and intercarrier compensation systems, the Commission adopted rate caps for the switched access services of rate-of-return carriers (including a transition to bill-and-keep for certain rate elements), thereby eliminating the need to apply separations rules for calculating switched access rates.³⁴ Further, rate-of-return carriers receiving high-cost universal service support based on the Commission's A-CAM programs but not electing incentive regulation for business data services no longer need to use jurisdictional separations to quantify the amount of high-cost support for the interstate portion of their common line services or to set interstate rates for these services.³⁵

III. FURTHER NOTICE OF PROPOSED RULEMAKING

11. We propose to extend the separations freeze for another six years and invite comment on this proposal. Several factors—recent changes to the composition of the Joint Board, the complex nature of the work required to develop comprehensive recommendations for separations reform, and the fact that the current freeze expires at the end of this calendar year—have combined to leave limited and insufficient time within which to develop and advance recommended decisions. Moreover, allowing the freeze to expire without further extension would force rate-of-return carriers to engage in unnecessary, costly and burdensome cost studies based on outdated rules and assumptions that bear little relationship to the marketplace today. Accordingly, after weighing the likely benefits of extending the current freeze against the likely costs of allowing it to expire, we propose extending the separations freeze until December 31, 2030. We seek comment on this proposal as well as whether we should change any aspect of the separations freeze should we extend the freeze as proposed.

12. *Process Considerations.* The 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.³⁶ In short the new Board

³⁴ *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, 17934-35, para. 801 & Fig. 9 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom.* *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

³⁵ *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, 3097, para. 21 (2016) (“[E]lection of model-based support places those carriers in a different regulatory paradigm. They no longer will be subject to rate-of-return regulation for common line offerings, and they no longer will participate in the National Exchange Carrier Association's (NECA's) common line pool. Effectively, the carriers that choose to take the voluntary path to the model are electing incentive regulation for common line offerings.”). The administrator of the universal service support program, the Universal Service Administrative Company, also uses separations categorization results for calculating high-cost loop support for certain non-fixed support carriers, but without applying jurisdictional allocations. 47 CFR § 54.1310. Some 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.

³⁶ *Federal-State Joint Board on Universal Service, Federal-State Joint Board on Jurisdictional Separations, et al.*, CC Docket Nos. 96-45, 80-286, et al., Order, FCC 24-15 (2024) (naming Commissioner Geoffrey Starks as the federal chair of the Federal-State Joint Board on Jurisdictional Separations and Commissioners Nathan Simington and Anna Gomez as new members); *Federal-State Joint Board on Universal Service, Federal-State Joint Board on Jurisdictional Separations, et al.*, CC Docket Nos. 96-45, 80-286, et al., Order, FCC 24-53 (2024) (naming Commissioners Mary Pat Regan, Karen Charles, Maida J. Coleman and Steven M. DeFrank as new State members) *See also* Letter from James Bradford Ramsay, General Counsel, NARUC, to the Honorable Jessica Rosenworcel, Chairwoman, FCC, CC Docket No. 80-286 (Mar. 15, 2024) (nominating Commissioners Karen Charles, Mary Pat Regan, and Maida J. Coleman to serve as members of the Separations Joint Board). Letter from James Bradford Ramsay, General Counsel, NARUC, to the Honorable Jessica Rosenworcel, Chairwoman, FCC, CC Docket No. 80-286 (Apr. 9, 2024) (nominating Commissioner Steven M. DeFrank to serve as a member of the Separations Joint Board).

will need time to develop a meaningful recommendation.³⁷ 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.³⁸ Section 410(c) contemplates a Joint Board recommendation before the Commission moves forward on comprehensive separations reform.³⁹ Therefore, as a practical matter, we are limited at this point to either extending the separations freeze or allowing the long-fallow and outdated separations rules to take effect on January 1, 2025.

13. *Benefits Outweigh the Costs.* We seek comment on the limited options available to the Commission under the current circumstances. The Commission has consistently found that letting the freeze expire would impose significant burdens on rate-of-return carriers, particularly smaller rural carriers, and create undue instability.⁴⁰ In extending the most recent freeze in 2018, the Commission explained that lifting the freeze and reinstating the separations rules after an absence of more than two decades, would make it extremely difficult, if not impossible, for most carriers to perform all of the studies needed to remain in full compliance.⁴¹ This would require substantial training and investment by rural incumbent LECs, and could cause significant disruptions to regulated rates, cost recovery, and other operating conditions when applying the outdated separations rules to today's operations.⁴² The Commission has thus previously concluded that the benefits that will result from granting a further extension of the freeze far exceed any possible harms.⁴³ We agree that these prior conclusions are compelling and remain relevant today. We propose to find that an additional extension of the freeze far outweighs any potential harms and we seek comment on this proposal.

14. In extending the separations freeze, we also propose to direct rate-of-return incumbent LECs to continue to use the same frozen category relationships and jurisdictional allocation factors. When the Commission allowed a one-time unfreeze of category relationships in 2018, only three carriers capitalized on this opportunity.⁴⁴ We seek comment on whether the Commission should reintroduce the option to unfreeze category relationships at this time. We also seek comment on the comparative costs and benefits of maintaining the separations freeze without offering an option to unfreeze category relationships.

15. *Length of the Freeze Extension.* We propose an extension period of up to six years. Under this proposal, the freeze would be extended until December 31, 2030 or until comprehensive reform of the Part 36 rules is achieved, whichever occurs earlier. We seek comment on this proposal. In

³⁷ In 2018, the Commission referred a couple of discrete issues to the Joint Board, but the Joint Board has not been able to issue a recommended decision on them. *See also 2018 Separations Freeze Extension Order*, 33 FCC Rcd at 12757-58, paras. 41-42.

³⁸ Even if the Joint Board could develop a recommendation for consideration, the Commission would likely seek comment on that recommendation before issuing an order revising the rules.

³⁹ *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”).

⁴⁰ *See, e.g., 2018 Separations Freeze Extension Order*, 33 FCC Rcd at 12750-51, paras. 21-23.

⁴¹ *See, e.g., id.* at 12750-51, para. 21.

⁴² *See, e.g., id.* at 12751, para. 22. Indeed, the Commission 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.” *2017 Separations Freeze Extension Order*, 32 FCC Rcd at 4224, para. 11.

⁴³ *See, e.g., 2018 Separations Freeze Extension Order*, 33 FCC Rcd at 12750, para. 19.

⁴⁴ *Id.* at 12753-57, paras. 29-40. *See* Letter from Darin T. LaCoursiere, President and CEO, Endeavor Commc'ns, to Kris Monteith, Chief, Wireline Competition Bureau, FCC, CC Docket No. 80-286 (filed Apr. 25, 2019); Letter from Bobby Dorries, Vice President, Valliant Telephone Co., to Kris Monteith, Chief, Wireline Competition Bureau, FCC, CC Docket No. 80-286 (filed Apr. 30, 2019); Letter from Peter Louviere, Chief Financial Officer, Lafourche Telephone Co., to Kris Monteith, Wireline Competition Bureau, FCC, CC Docket No. 80-286 (filed May 1, 2019).

2018, given the difficulty of achieving reform up to that point, the Commission initially proposed a fifteen-year freeze because short-term extensions adopted in the past would “not provide the Joint Board, the Commission, and interested stakeholders sufficient time” to revise its rules.⁴⁵ After considering comments submitted in response to that proposal, including from the State members of the Joint Board, the Commission found that an extension of up to six years was more appropriate.⁴⁶

16. When the Commission extended the freeze for six years in 2018, it concluded that this time period best “balances the competing considerations” of enabling the Joint Board to focus on solving the complex issues versus the Commission’s experience in granting a series of short-term separations extensions in the past when attempts at separations reform stalled.⁴⁷ Does this assessment continue to weigh in favor of the Commission granting another six-year freeze extension? Have any circumstances changed that would lead to a different assessment, or do parties have other views on the length of an extension? Should the freeze be extended for a longer period of time than six years? Repeated short-term freeze extensions necessarily consume Commission, State, and industry resources. Alternatively, should we permanently extend the separations freeze, as some commenters have suggested in the past?⁴⁸

17. We ask commenters to discuss the advantages and disadvantages of a temporally defined extension period versus an unlimited extension until comprehensive reform is achieved. We seek comment on the specific reasons in support of recommended timeframes. In this regard, we recognize that the Federal and State members of the Joint Board have not issued a recommended decision on comprehensive separations reform in the more than two decades since the Commission originally proposed such reform. Commenters supporting shorter extension periods than our proposed six years should also take into account the time necessary for the Commission and the industry to adopt and implement revised separations rules and procedures.

18. We also invite comment on what effect, if any, particular extension periods would have on rates and ratepayers. Would a relatively long or permanent extension be inconsistent with section 201(b) of the Act’s prohibition on unjust and unreasonable charges?⁴⁹ For example, in the past, some commenters have supported extending the freeze for 15 years,⁵⁰ while others expressed concern that such a long freeze would result in unjust and unreasonable rates because of the frozen allocation of the underlying costs to the interstate and intrastate jurisdictions.⁵¹

19. *Joint Board Consultation on the Freeze Extension.* Consistent with Commission precedent, the Commission is not seeking an additional referral to, or expecting an additional recommended decision from, the Joint Board to extend the separations rules freeze.⁵² At the same time, we find it appropriate to renew the Commission’s prior reform referrals to the Joint Board in the accompanying Order. In previously extending the freeze, the Commission has found such extensions to fall within the scope of the Joint Board’s recommended decision granting the first freeze.⁵³ In the 2001

⁴⁵ 2018 Separations Freeze Extension Order, 33 FCC Rcd at 12752, para. 25.

⁴⁶ *Id.* at 12752-53, paras. 25, 27.

⁴⁷ *Id.*

⁴⁸ *Id.* at 12753, para. 28 & n.76 (citing USTelecom Comments).

⁴⁹ See 47 U.S.C. § 201(b).

⁵⁰ See 2018 Separations Freeze Extension Order, 33 FCC Rcd at 12752, para. 25 & n.67 (citing comments by Concerned Rural LECs, NECA, NTCA, and WTA).

⁵¹ See *id.* at 12761, para. 49 & n.144 (citing NARUC Comments).

⁵² *Id.* at 12758-59, paras. 44-45; 2001 Separations Freeze Order, 16 FCC Rcd at 11383, 11397, paras. 2, 29.

⁵³ 2018 Separations Freeze Extension Order, 33 FCC Rcd at 12758-59, paras. 44-45 (citing 2001 Separations Freeze Order, 16 FCC Rcd at 11383, 11397, paras. 2, 29; 2006 Separations Freeze Extension Order, 21 FCC Rcd at 5525, para. 21).

Separations Freeze Order following the Joint Board recommendation, in adopting the first separations freeze, the Commission recognized that it might need to extend the freeze if comprehensive reform was not completed before the freeze expired.⁵⁴ Since then, the Commission has extended the freeze eight times without an additional referral of the freeze to the Joint Board.⁵⁵ We nevertheless value the Joint Board's input, and commit to engage in consultations with the Joint Board regarding this proposed extension and any interim separations reform measures that may be needed during the freeze.⁵⁶

IV. ORDER

20. *Renewal of Joint Board Referrals.* By this *Order*, we renew the existing referrals to the Joint Board, including both the 1997 and 2009 comprehensive reform referrals and the 2018 interim reform measures referral.⁵⁷ We renew these referrals in light of the substantial changes that have unfolded within the telecommunications market alongside extensive changes in federal and state regulatory frameworks since these referrals were first made. The Commission is committed to working with the Joint Board to develop an efficient modern ratemaking system for all carriers for the longer term, as well as any interim adjustments that may be necessary while comprehensive reform remains pending.

V. PROCEDURAL MATTERS

21. *Deadlines and Filing Procedures.* 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.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Electronic Comment Filing System: <http://apps.fcc.gov/ecfs/>.⁵⁸
- 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 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.
 - 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 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings at its headquarters. This is a temporary measure

⁵⁴ *2001 Separations Freeze Order*, 16 FCC Rcd at 11383, 11397, paras. 2, 29.

⁵⁵ See *2018 Separations Freeze Extension Order*, 33 FCC Rcd at 12759, para. 45 & n.132 (citing seven orders extending the freeze without an additional referral). When the Commission extended the freeze in 2018, it also did not seek an additional referral. *Id.* at 12758-59, paras. 44-45.

⁵⁶ See *id.* at 12759, para. 45.

⁵⁷ *1997 Separations Reform NPRM and Referral*, 12 FCC Rcd at 22124, para. 5; *2009 Separations Freeze Extension Order and Second Referral*, 24 FCC Rcd at 6167, para. 15; *2018 Separations Freeze Extension Order*, 33 FCC Rcd at 12758, paras. 42-43.

⁵⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁵⁹

- *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).
- *Availability of Documents*. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.

22. *Ex Parte Requirements*. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁶⁰ 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.

23. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA),⁶¹ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁶² Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible/potential impact of the rule and policy changes contained in this *Further Notice*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comment on this *Further Notice*. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the first page of this document.⁶³

24. *Final Regulatory Flexibility Analysis*. Although in previous orders that included comprehensive and interim reform referrals to the Joint Board the Commission incorporated a Final

⁵⁹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

⁶⁰ 47 CFR § 1.1200 *et seq.*

⁶¹ See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁶² *Id.* § 605(b).

⁶³ See 5 U.S.C. § 603(a).

Regulatory Flexibility Analysis (FRFA),⁶⁴ such analysis is not required here because the renewed referral is not a rule adopted through notice and comment rulemaking under 5 USC § 553(b).⁶⁵

25. *Paperwork Reduction Act.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, 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 107-198.⁶⁶

26. *Providing Accountability Through Transparency Act.* The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.⁶⁷ Accordingly, the Commission will publish the required summary of this *Further Notice* on <https://www.fcc.gov/proposed-rulemakings>.

27. For further information about this proceeding, please contact Marv Sacks, Wireline Competition Bureau, Pricing Policy Division, 45 L Street NE, Washington, D.C. 20554, (202) 418-2017, marvin.sacks@fcc.gov.

VI. ORDERING CLAUSES

28. 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 and Order IS ADOPTED.

29. IT IS FURTHER ORDERED that, pursuant to section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 410(c), this Order renews the prior referrals to the Federal-State Joint Board on Separations for preparation of a recommended decision.

30. 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 and Order on each state commission.

⁶⁴ 1997 Separations Reform NPRM and Referral, 12 FCC Rcd at 22169-70, paras. 112-14; 2009 Separations Freeze Extension Order and Second Referral, 24 FCC Rcd at 6169-70, paras. 21-25; 2018 Separations Freeze Extension Order, 33 FCC Rcd at 12762, para. 55.

⁶⁵ See 5 USC §604(a) (requiring a final regulatory flexibility analysis “[w]hen an agency promulgates a final rule”); 5 USC §553(b) (defining a “rule” as “an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy . . .”).

⁶⁶ See 44 U.S.C. § 3506(c)(4).

⁶⁷ 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

31. IT IS FURTHER ORDERED that the Commission's Office of the Secretary SHALL SEND a copy of this Further Notice of Proposed Rulemaking and Order, including the Initial Regulatory Flexibility Analysis and Final Regulatory Flexibility Certification, 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, 47 CFR part 36, 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 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 154(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, 410, and 1302 unless otherwise noted.

2. Amend the following rules and sections of the rules in 47 CFR part 36 by removing the date “December 31, 2024” everywhere it appears and adding in its place the date “December 31, 2030”:

a. Section 36.3(a), (b), (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)(5)-(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),⁶⁸ the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules imposed in the *Further Notice of Proposed Rulemaking (Further Notice)*. 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 specified in the *Further Notice*. The Commission will send a copy of the *Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).⁶⁹ In addition, the *Further Notice* and IRFA (or summaries) will be published in the *Federal Register*.⁷⁰

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

2. The Commission's part 36 rules regarding jurisdictional separations category relationships and cost allocation factors (separations rules) originated more than 35 years ago when the Commission and its State counterparts used costs to set rates, and the rules were designed to help prevent local exchange carriers (LECs) from recovering the same costs from both the interstate and intrastate jurisdictions.⁷¹ 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.⁷² 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.⁷³ The Commission has extended the freeze eight times, with the most recent extension set to expire on December 31, 2024.⁷⁴

3. In repeatedly extending the freeze, the Commission has explained that the freeze would stabilize and simplify the separations process while the Joint Board and the Commission continued to work on separations reform.⁷⁵ 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 Joint 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

⁶⁸ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-12, 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).

⁶⁹ *Id.* § 603(a).

⁷⁰ *Id.*

⁷¹ See 47 CFR Part 36.

⁷² 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).

⁷³ *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*).

⁷⁴ *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order and Waiver, 33 FCC Rcd 12743, 12750, para. 19 (2018) (*2018 Separations Freeze Extension Order*).

⁷⁵ See, e.g., *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 32 FCC Rcd 4219, 4223, paras. 10-11 (2017) (*2017 Separations Freeze Extension Order*) (citing rural carrier associations comments); *2001 Separations Freeze Order*, 16 FCC Rcd at 11388-90, paras. 10, 12.

before the current freeze expires.⁷⁶ Section 410(c) of the Communications Act of 1934, as amended, contemplates a Joint Board recommendation before the Commission moves forward on comprehensive separations reform.⁷⁷ Therefore, as a practical matter, the Commission is limited at this point to either extending the separations freeze or allowing the outdated separations rules to take effect on January 1, 2025.

4. The Commission expects that permitting the freeze to expire would impose significant burdens on rate-of-return carriers, many of which include small carriers, that would far exceed the benefits, if any, of requiring those carriers to comply with rules that they have not implemented since 2001. As a result, the *Further Notice* proposes to extend for up to six years the freeze of part 36 category relationships and jurisdictional cost allocation factors to enable the Joint Board to address the complex nature of the work involved in developing comprehensive recommendations for separations reform. Under this proposal, this extension would continue until the earlier of December 31, 2030, or the completion of comprehensive reform of the part 36 jurisdictional separations rules. The Commission invites comments on this proposal.

B. Legal Basis

5. The proposed action is authorized pursuant to 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 the Proposed Rules Will 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.⁷⁸ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸⁰ 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 SBA.⁸¹

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.⁸² First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis,

⁷⁶ Referrals by the Commission pending before the Joint Board include both the 1997 and 2009 comprehensive reform referrals and the 2018 interim reform referral measures. *See, e.g., 2018 Separations Freeze Extension Order*, 33 FCC Rcd at 12757-58, paras. 41-42.

⁷⁷ *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”).

⁷⁸ 5 U.S.C. § 603(b)(3).

⁷⁹ *See id.* § 601(6).

⁸⁰ *See id.* § 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.”

⁸¹ 15 U.S.C. § 632.

⁸² 5 U.S.C. § 601(3)-(6).

according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.⁸³ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.⁸⁴

8. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁸⁵ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.⁸⁶ Nationwide, for tax year 2022, there were approximately 530,109 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.⁸⁷

9. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”⁸⁸ U.S. Census Bureau data from the 2022 Census of Governments⁸⁹ indicate there were 90,837 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.⁹⁰ Of this number, there were

⁸³ See SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

⁸⁴ *Id.*

⁸⁵ 5 U.S.C. § 601(4).

⁸⁶ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

⁸⁷ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2022 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (71,897), Region 2-Mid-Atlantic and Great Lakes Areas (197,296), and Region 3-Gulf Coast and Pacific Coast Areas (260,447) that includes the continental U.S., Alaska, and Hawaii. This data includes information for Puerto Rico (469).

⁸⁸ 5 U.S.C. § 601(5).

⁸⁹ 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/economic-census/year/2022/about.html>.

⁹⁰ See U.S. Census Bureau, 2022 Census of Governments – Organization Table 2. Local Governments by Type and State: 2022 [CG2200ORG02], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG2200ORG02 Table Notes_Local Governments by Type and State_2022.

36,845 general purpose governments (county,⁹¹ municipal, and town or township⁹²) with populations of less than 50,000 and 11,879 special purpose governments (independent school districts⁹³) with enrollment populations of less than 50,000.⁹⁴ Accordingly, based on the 2022 U.S. Census of Governments data, we estimate that at least 48,724 entities fall into the category of “small governmental jurisdictions.”⁹⁵

10. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.⁹⁶ Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.⁹⁷ By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.⁹⁸ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁹⁹

11. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.¹⁰⁰ U.S. Census Bureau data for 2017 show that there

⁹¹ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2022 [CG2200ORG05], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 2,097 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

⁹² See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2022 [CG2200ORG06], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 18,693 municipal and 16,055 town and township governments with populations less than 50,000.

⁹³ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2022 [CG2200ORG10], <https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html>. There were 11,879 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2022 [CG2200ORG04], CG2200ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2022.

⁹⁴ While the special purpose governments category also includes local special district governments, the 2022 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

⁹⁵ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,845) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (11,879), from the 2022 Census of Governments - Organizations tbls. 5, 6 & 10.

⁹⁶ See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

¹⁰⁰ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

were 3,054 firms that operated in this industry for the entire year.¹⁰¹ Of this number, 2,964 firms operated with fewer than 250 employees.¹⁰² Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.¹⁰³ Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.¹⁰⁴ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers¹⁰⁵ is the closest industry with an SBA small business size standard.¹⁰⁶ The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.¹⁰⁷ U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.¹⁰⁸ Of this number, 2,964 firms operated with fewer than 250 employees.¹⁰⁹ Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.¹¹⁰ Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.¹¹¹ Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

13. 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."¹¹² The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs

¹⁰¹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

¹⁰² *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹⁰³ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

¹⁰⁴ *Id.*

¹⁰⁵ See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹⁰⁶ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

¹⁰⁷ *Id.*

¹⁰⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

¹⁰⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

¹¹⁰ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

¹¹¹ *Id.*

¹¹² See 5 U.S.C. § 601(3).

are not dominant in their field of operation because any such dominance is not “national” in scope.¹¹³ Because our proposal to freeze the part 36 rules will affect incumbent LECs, some entities employing 1,500 or fewer employees may be affected by the rule changes proposed in the *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 for Small Entities

14. The proposed rules, if adopted, would not impose any new or additional requirements on small or other entities. The *Further Notice* proposes to extend an existing freeze, and the Commission does not anticipate small entities will incur additional compliance costs, or be required to hire professionals to comply with the rule proposals, if adopted.

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

15. The RFA requires an agency to describe any significant, specifically small business, 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 or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for such small entities.¹¹⁴

16. The Commission’s proposed rules to extend the separations freeze is not expected to have a significant economic impact on a substantial number of small entities. To the contrary, an extension of the separations freeze constitutes an essential step towards reducing unnecessary and burdensome costs to small entities when compared to the alternative of not doing so. For example, if the freeze was allowed to expire and was not extended, the outmoded separations rules would be reinstated. The Commission has consistently over the years found that such a result would impose new significant economic burdens on rate-of-return carriers, particularly smaller rural carriers, and create undue instability for those carriers.¹¹⁵ Indeed, if the separations rules were reinstated after an absence of more than two decades, most affected carriers would find it extremely difficult, if not impossible, to perform all of the studies needed to remain in full compliance.¹¹⁶ This would require substantial training and investment by affected rural incumbent LECs, and could cause significant disruptions in regulated rates, cost recovery, and other operating conditions when applying the outdated separations rules to today’s operations.¹¹⁷

17. In addition, the jurisdictional freeze has eliminated the need for many rate-of-return incumbent LECs that still perform cost studies, including incumbent LECs with 1,500 employees or fewer, to complete certain annual separations studies that otherwise would be required by the Commission’s Part 36 jurisdictional separations rules. Thus, an extension of this freeze would avoid

¹¹³ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (filed May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

¹¹⁴ 5 U.S.C. § 603(c)(1)-(4).

¹¹⁵ See, e.g., *2018 Separations Freeze Extension Order*, 33 FCC Rcd at 12750-51, paras. 21-23.

¹¹⁶ See, e.g., *id.* at 12750-51, para. 21.

¹¹⁷ See, e.g., *id.* at 12751, para 22. Indeed, the Commission 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.” *2017 Separations Freeze Extension Order*, 32 FCC Rcd at 4224, para. 11.

increasing the administrative burden of regulatory compliance for these carriers, including small incumbent LECs.

18. The Commission has thus previously concluded that the benefits that will result from an additional extension of the freeze far exceed any possible harms and anticipates that those prior conclusions are compelling and remain relevant today.¹¹⁸ We therefore propose to extend the separations freeze to permit rate-of-return incumbent LECs to continue to use the same frozen category relationships and jurisdictional allocation factors. We invite comment on this proposal and on the relative costs and benefits of continuing the separations freeze.

19. When the Commission granted a six-year freeze in 2018, it concluded that this time period best “balances the competing considerations” of enabling the Joint Board to focus on solving the complex issues versus the Commission’s experience in granting a series of short-term separations extensions in the past when attempts at separations reform stalled.¹¹⁹ The Commission seeks comment on whether this assessment continues to weigh in favor of the Commission granting another six-year freeze extension, whether any circumstances changed that would lead to a different assessment, and whether parties have other views on the length of an extension.

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

20. None.

¹¹⁸ See, e.g., *2018 Separations Freeze Extension Order*, 33 FCC Rcd at 12750, para. 19.

¹¹⁹ *Id.* at 12752-53, paras. 25, 27.