



**NEW YORK STATE TELECOMMUNICATIONS ASSOCIATION, INC.**

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June 17, 1998

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Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Room 222 1919 M Street, NW  
Washington, D.C. 20554

RE: The National Exchange Carrier  
Association, Inc. Petition for Waiver of  
Section 36.2(a)(3) of the Commissions  
Rules.

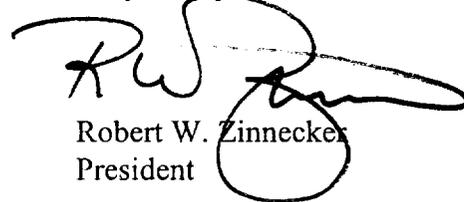
CC Docket No. 80-286

Dear Ms. Roman Salas:

Enclosed herewith for filing with the Commission are the original and six copies of the New York State Telecommunications Association's reply comments on the above captioned matter.

Please acknowledge receipt hereof by affixing a notation on the duplicate copy of this letter furnished herewith for such purposes and remitting same in the enclosed stamped self addressed envelope.

Very truly yours,

  
Robert W. Zinnecker  
President

RWZ/trk

Enclosure

cc: Active Parties

No. of Copies rec'd 046  
List A B C D E

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
The National Exchange Carrier Association, Inc. ) CC Docket No. 80-286  
Petition for Waiver of Section 36.2(a)(3) )  
of the Commissions Rules. )

**Comments of the New York State Telecommunications Association, Inc.  
Petition for Interim Waiver of Section 36.2(a)(3) Filed by:  
The National Exchange Carrier Association, Inc.,  
CC Docket No. 80-286, DA 98-909**

The New York State Telecommunications Association, Inc.

By: Robert W. Zinnecker  
President

Suite 650, 100 State Street  
Albany, NY 12207  
518-443-2700

June 17, 1998

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
)  
The National Exchange Carrier Association, Inc. ) CC Docket No. 80-286  
Petition for Waiver of Section 36.2(a)(3) )  
of the Commissions Rules. )

**COMMENTS OF THE NEW YORK STATE TELECOMMUNICATIONS ASSOCIATION, INC.**

The New York State Telecommunications Association, Inc. (NYSTA) hereby files these comments in response to the May 14, 1998, Public Notice, DA 98-909 (Public Notice), related to the National Exchange Carrier Association, Inc. (NECA) petition for an interim waiver of section 36.2(a)(3) of the Federal Communications Commission (FCC or Commission) rules filed on behalf of the members of its traffic-sensitive access charge pool.

NYSTA is a trade association providing education, information and advocacy for 43 telecommunications carriers in New York State. Since the public notice seeks comments on issues affecting our members in matters of cost recovery, NYSTA is an interested party in this proceeding.

**I. NYSTA Supports NECA's Petition.**

NYSTA supports NECA's efforts to seek an interim waiver of the Commission's actual use principal as provided for in section 36.2(a)(3) of FCC rules as it applies to the development and use of usage-based apportionment factors in the separations process.

NYSTA shares NECA's concern that "continuing growth in Internet traffic, with its emphasis on data transmission, and disproportionately long holding times, is causing unintended consequences in separations results." As usage of the Internet increases, and with the majority of the access to the Internet being provided via the LEC's local calling scope, NYSTA believes jurisdictional shifts are inevitable leading to

significant upward pressure on local rates. Such a result is contrary to the intentions of the Telecommunications Act which provides that “the Commission and States should ensure that Universal Service is available at rates that are just, reasonable and affordable.”

NYSTA is concerned because of the fact that our member companies are, for the most part, rate base, rate of return regulated for intrastate purposes, and, consequently are afforded an opportunity to recover their costs and earn a return on their investment. If Internet traffic were to be classified as local in nature, intrastate usage would increase and this in turn would cause a shift in costs from interstate to the intrastate jurisdiction. This shift would place significant upward pressure on local rates.

## **II. Actual use and Other Fundamental Principles of Cost Recovery.**

NYSTA acknowledges the historical perspective that “actual use” is a fundamental principle of separations but it is not the sole principle affecting cost recovery and it should not be viewed separately from all other principles which include preventing large jurisdictional shifts of costs and maintaining reasonable local service rates.

NYSTA is particularly concerned and sensitive to the issue of the application of “actual use” as it applies to NYSTA’s small member companies. While Bell Atlantic serves approximately 89% of New York’s telecommunications customers, and Frontier Corporation serves approximately 5% of these customers, the remaining 38 Incumbent Local Exchange Carriers (ILECs), who are members of NYSTA, serve the remaining 5% of customers. What is more significant, is that these 38 ILECs serve approximately 50% of the land mass of the state of New York. Much of this area is mountainous and has low subscriber density, which results in high costs to serve. These companies derive a significant portion (as much as 60% to 80%) of their regulated revenues from access (including long term support and local switching support) due to this difference in geographic area served.

The FCC has made explicit provisions to support the unique treatment of rural telephone companies for Universal Service purposes, as illustrated by the FCC’s position regarding the potential impact on rural

telephone companies through the establishment of transitional rules which it applied to them through at least the year 2000 as well as its reversal of the Joint Board's decisions to freeze historical levels of support and to eliminate support for multi-line business lines and second additional lines when it became evident that these actions would undermine Universal Service for rural telephone companies.

**III. NECA's Waiver Request Pending Comprehensive Separations Reform is Needed to Prevent Jurisdictional Shifts That Could Affect Universal Service.**

NECA's waiver request, pending comprehensive separations reform is reasonable and necessary to prevent jurisdictional shifts that could affect universal service. The potential financial impacts identified by NYSTA in the previous two points and in particular the impacts on small rural telephone companies underscore the reasonableness of NECA's proposal of an interim waiver of section 36.2(a)(3). We believe that continued growth of Internet traffic necessitates Commission approval of NECA's interim waiver request in order to prevent significant jurisdictional shifts.

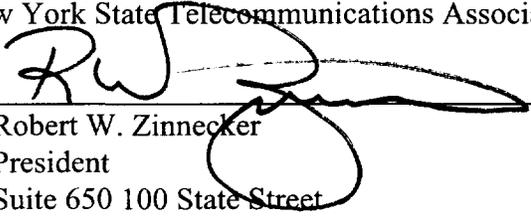
**IV. Conclusion**

In conclusion, for the reasons stated above and in light of the significant financial disruptions that rural telephone companies can expect from the jurisdictional shift caused by Internet apportionment and the separations process, NYSTA requests that the FCC approve NECA's waiver request.

Respectfully Submitted

The New York State Telecommunications Association, Inc.

By: \_\_\_\_\_

  
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