



Public Utility Commission of Texas

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March 25, 1999

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: CC Docket No. 80-286 (Joint Board State Members= Report)
In the Matter of Jurisdictional Separations Reform
and Referral to the Federal-State Joint Board

To the Secretary:

Enclosed herewith for filing with the Commission are an original plus four copies of the Comments of the Public Utility Commission of Texas in the above captioned matter. We are also providing copies to ITS, the Common Carrier Bureau, and the Joint Board service list. We are also providing an electronic copy of these comments via your ECFS interface.

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Sincerely,

Steve Davis
Director, Office of Policy Development

cc: ITS, Inc.
Sharon Webber, Accounting Policy Division
Federal-State Joint Board Service List

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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

**COMMENTS OF THE
PUBLIC UTILITY COMMISSION OF TEXAS**

On December 21, 1998, the state members of the Federal-State Joint Board released the *State Members= Report on Comprehensive Review of Separations*. On February 26, the Federal Communications Commission (AFCC=) issued a Public Notice seeking comment on the state members= report. The Public Utility Commission of Texas (APUCT=), having jurisdiction over intrastate telecommunications services in Texas, herein provides its comments in response to the Public Notice and the state members= report.

The PUCT earlier filed comments¹ with the FCC in response to the initial Notice of Proposed Rulemaking.² Many of the concerns voiced by the PUCT in those comments are echoed in the state members' report. In our earlier comments, we suggested that a review of the current dual-jurisdictional nature of rate regulation might be in order in light of recent statutory and regulatory changes. Further, to the extent that the current dual-jurisdictional system remains, we supported the continuation of a jurisdictional separations process, and we further supported simplification of the current process. In these comments, we provide our initial response to the state members' report, and look forward to more fully addressing these

¹ Comments of the Public Utility Commission of Texas, CC Docket No. 80-286, In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, December 4, 1997.

² In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket No. 80-286, Notice of Proposed Rulemaking, FCC 97-354, October 7, 1997, ("NPRM")

issues in the future when further questions and notices are released.

Confiscation liability. The state members maintain that some form of jurisdictional separations will be required as long as a potential confiscation liability remains. We agree with the state members' assessment. While our December 1997 comments did not refer specifically to the issue of confiscation, we expressed concern over the potential elimination of the separations process so long as we continue to use a dual federal/state regulatory model. The benchmark by which confiscation will be argued does hinge on the assignment of costs between jurisdictions, and to large extent on the allocation of the costs of the local telecommunications network.

Effects of new technologies on the separations process. The state members found that technological changes, such as the shift from circuit to packet switching, may require changes in how traffic sensitive and non-traffic sensitive joint and common costs are measured and allocated. There should be no question that the current categorization of non-traffic-sensitive and traffic-sensitive costs must be reviewed as soon as possible. The FCC's recent decision with respect to Internet traffic³ raises a significant question with respect to jurisdictional separations. That decision redefines the nature of a local call, and must be reflected in some manner in changes to the Part 36 separations rules. If all calls involving Internet usage are classified as interstate, then separations rules must be revised so that the costs of network facilities for such a connection are assigned to be recovered from the interstate jurisdiction.

³ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, Declaratory

Difficulties in tracking usage. The state members claim that it has become increasingly difficult to track jurisdictional usage, most notably in connection with Internet usage. The current separations rules were based on an assumption of voice-grade service, and that assumption is no longer valid. Not only has the jurisdictional nature of a call changed from state-local to interstate, but the measurement of usage has changed from simple minutes-of-use to another measure, possibly the number of packets or the bandwidth occupied. As esoteric as the separations process currently is, we must remember that it is the foundation upon which all telecommunications service rates will be based. In the competitive environment, separations will continue to be used to determine cost floors and to evaluate cross-subsidy issues.

Effects of end-user charges. The state members claim that since 1986, when the Commission required some costs assigned to the interstate jurisdiction to be recovered from end-users through a flat monthly charge, the subscriber line charge (SLC) has essentially become another basic monthly charge. The state members assert that since the imposition of the SLC, there is no longer a direct relationship between the jurisdictional assignment of costs and the level of basic monthly charges paid by customers. The Texas PUC agrees that the imposition of the interstate SLC blurred the distinction between traditional flat-rate local charges and traditional usage-based interstate charges. Customers seem to view the SLC as just another part of their basic local service charge, and are generally unaware of the interstate distinction. This is only one of many factors that is currently causing customer

Ruling and Notice of Proposed Rulemaking, FCC 99-38, February 25, 1999.

confusion over their bills, as we are all aware. One of the FCC's goals in separations reform should be to reduce customer confusion.

Section 254(k). The state members believe that section 254 of the 1996 Act, which provides that "services included in the definition of universal service bear no more than a reasonable share of joint and common costs of facilities used to provide those services," may require accounting and separations rule changes. As indicated above, the Texas PUC sees a fundamental disconnection in the logic of jurisdictional assignment of network costs in view of today's technology and network usage. The assignment of a reasonable share of joint and common costs is at the core of many of today's most difficult regulatory issues in telecommunications, such as universal service, forward-looking costs, and competitive pricing.

Competitive services. The state members indicate that any reform of jurisdictional separations must take into account how costs are allocated between the jurisdictions when certain services are deregulated. In this regard, the state members claim that such reform may require an integration of Parts 36 and 64. The Texas PUC agrees that Parts 36 and 64 must be examined at the same time. Reform of Part 69, involving access pricing, will almost certainly be necessitated by any significant change in Part 36 as well.

Modified structure. The state members recommend that the separations Joint Board consider proposals that fundamentally alter the basis upon which costs are allocated between the jurisdictions, e.g., GTE and US WEST proposal that proposes assigning significantly more costs and revenues to the state jurisdiction. The Texas PUC does not wish to support any

particular proposal at this time. However, we must recognize that statutory revisions, advances in telecommunications technology, and increasing competition all call for significant changes to the regulatory regime. As one FCC critic recently observed, we are using horse and buggy methods in a supersonic world. The separations process must be modified in a way that will allow regulators to respond to today's (and tomorrow's) environment. We urge the FCC to work closely with the Joint Board and the states to design a plan that is workable, and that assigns the appropriate amount of authority to parallel the assignment of responsibility.

Transitional reform. The state members recommend that, until comprehensive separations reform can be adopted, the Joint Board should adopt on an interim basis a three-year rolling average, which would reduce the impact of usage changes and resulting cost shifts from year to year. The Texas PUC agrees with a transition mechanism to be used for a short period, but urges the FCC to address the separations issue as quickly as possible. As we have indicated, we believe that this complex issue is central to many other difficult issues we regulators face today, and we must resolve it as soon as possible.

In conclusion, the Texas PUC agrees with the state members' call for comprehensive reform of the jurisdictional separations process. We view the jurisdictional separations process specifically the allocation of joint and common costs to be at the heart of many of the difficult regulatory policy decisions of the day. We urge the FCC to proceed as quickly as possible to resolve the separations dilemma.

We appreciate the opportunity to provide comments in this very important proceeding,
and we look forward to working with the Commission in resolving these issues.

Respectfully submitted,

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1701 N. Congress Avenue
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March 25, 1999

Pat Wood, III
Chairman

Judy Walsh
Commissioner

Brett Perlman
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