

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

**RECEIVED**  
MAR 30 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
)  
Jurisdictional Separation Reform )  
And Referral to the Federal State )  
Joint Board )

CC Docket No. 80-256

**AMERITECH'S COMMENTS ON THE STATE MEMBERS' REPORT**

**I. INTRODUCTION**

Ameritech<sup>1</sup> hereby responds to the Public Notice released February 26, 1999 in the above docket. Ameritech submits that the State Members' Report on Comprehensive Review of Separations ("the Report")<sup>2</sup> does not provide any positive support for true separations reform. Indeed, adoption of the Report's proposals would needlessly encumber the reform process initiated in the Notice of Proposed Rulemaking in this proceeding released nearly eighteen months ago. The Report's self-described attempt to deliberately ignore the issues in the NPRM in favor of "highlight(ing) some broad items related to the long term approach to comprehensive review"<sup>3</sup> results in a diversion rather than "a vehicle to continue down a constructive path toward comprehensive separations reform."<sup>4</sup>

Similarly, the call for further meetings of the Joint Board to develop a *Further* Notice of

<sup>1</sup> Ameritech means Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company and Wisconsin Bell, Inc.

<sup>2</sup> See State Members' Report on Comprehensive Review of Separations, filed December 21, 1998, in this proceeding ("the Report").

<sup>3</sup> *Ibid.* at pp. 16-17.

<sup>4</sup> *Ibid.* at pp. 1.

No. of Copies rec'd 014  
List A B C D E

Proposed Rulemaking prior to the adoption of interim relief belies the achievement of separations reform “in an expedited fashion.”<sup>5</sup>

The Comments of the parties filed in this proceeding show that the separations process is rapidly becoming obsolete in an increasingly competitive environment. It needs to be reformed, or at the very least frozen, as proposed by the industry,<sup>6</sup> until it may be extensively reformed or eliminated. Accordingly, rather than adopt the three-year rolling average proposal in the Report, followed by “comprehensive reform” three to five years later, Ameritech again proposes that the categorized relationships and separations apportionment factors be frozen and remain so until true separations reform is completed, or the emergence of a sufficiently competitive environment eliminates the need for the separations process.

## **II. ISSUES ADDRESSED IN THE STATE MEMBERS’ REPORT**

### **A. CONFISCATION**

With regard to the confiscation issue, Ameritech agrees with the Report’s conclusion that “some form of separations will continue to be needed for at least the next few years”<sup>7</sup> during the transition to a competitive environment. We also agree that no particular form of separation is required under Smith v. Illinois Bell Tel. Co.<sup>8</sup>. Therefore, it follows that a frozen separations process would continue to meet regulatory requirements. The industry proposal would freeze the separations factors and, in the case of price cap carriers, also freeze the category relationships. For non-price cap carriers, the factors would be frozen based on a three-year average, while the categories would continue to be

---

<sup>5</sup> *Ibid.*

<sup>6</sup> See United States Telephone Association Comments, filed December 10, 1997 in this matter, pp. 9-12.

<sup>7</sup> See the Report at p. 6.

<sup>8</sup> 282 U.S. 133 (1930).

current. In both cases the current accounting results, developed in accordance with Part 32, would continue to be processed through Parts 36 and 69, and the results would be reported in the ARMIS reports.

Finally, we agree that separations will be unnecessary “if all ILEC services were declared competitive and therefore were no longer regulated.”<sup>9</sup> In a competitive marketplace, prices will need to reflect actual market and cost conditions, not the artificial results derived from separations. Prices will need to be developed in such a manner as to be able to respond to market conditions, irrespective of the jurisdiction. Ultimately, competition will cause services to be priced and designed in response to customer demands.

#### **B. EFFECTS OF NEW TECHNOLOGIES ON THE SEPARATIONS PROCESS**

Ameritech agrees with the Report’s conclusion that technological shifts have destabilized the policy compromises reflected in current separations allocations. Today, technology advances are being developed and deployed at an unprecedented rate. This is due primarily to the increased number of entrants in the telecommunications business, resulting in increased competition in the telecommunications marketplace. These advances in technology will accelerate the obsolescence of the separations process.

Packet Switching is a prime example of one of the problems facing the existing separations process and one which is becoming more prevalent as the network shifts more of its capacity to data services. The existing process apportions Packet Switching to the jurisdictions by the determination of where the packet switch is located. The switching equipment is located in an end office, and so it is categorized as Central Office Equipment

---

<sup>9</sup> See the Report at p. 5.

(COE) Category Three and apportioned to the interstate and intrastate jurisdictions by use of the Dial Equipment Minutes (DEM) Factor. However, the current process does not have the ability to measure the actual usage of the packet network. Other examples of this problem are Asynchronous Transfer Mode (ATM) and Asynchronous Digital Subscriber Line (ADSL). These technologies can continue to be handled through the current separations process, but the results will only provide the illusion of accuracy in measuring actual use.

Furthermore, the current process, which is based on categories and jurisdictions, does not lend itself to the unique identification of new technologies and services, and thus does not accomplish what some think it should. An example is the treatment of Internet Service Provider (ISP) Internet Access under this Commission's recent ruling,<sup>10</sup> which found the traffic predominantly jurisdictionally interstate in nature, while maintaining the FCC exemption that allows Enhanced Service Providers (ESPs) to continue to obtain their connections under intrastate end-user tariffs. This intentional non-cost causative classification of Internet usage results in a significant increase to the intrastate jurisdiction while decreasing the interstate jurisdictional results.

### **C. DIFFICULTIES IN TRACKING USAGE**

Ameritech also agrees that usage is now more difficult to track, which creates problems with the current separations process. The telecommunications environment of today is vastly different from the network of the past when "plain old telephone service" (POTS) was the staple of the network and all usage was resident in the telephone company switch. Today with the increased number of competitors, new technologies and new services, that is no longer the case.

The usage associated with packet switching does not conform to the measurements of the past. Packets of data can encompass a whole range of services from voice to video. These packets have a unique identifier, which directs the packet to various locations in the “blinking of an eye”. There is no reasonable way to incorporate this usage with traditional usage such as DEM. This problem will continue to escalate as new technologies continue to allow the commingling of voice and data over the same facility at the same time, e.g., ATM and ADSL.

#### **D. EFFECTS OF END USER CHARGES**

The Report also correctly identifies one of the major problems with the existing separations process, stating that “(s)eparations has, throughout its history, been viewed as a way to help keep basic service rates low by assigning [intrastate] costs to the interstate jurisdiction, . . .”<sup>11</sup> The tradition of building subsidies into the separations process to support local service has been replaced by the new Universal Service requirements spelled out in the 1996 Telecommunications Act. As subsidies become more explicit, other methods of recovery are required. One manner of recovery is the end user charge, which properly imposes costs on the cost-causer.

Ameritech does not believe that the separations process should be used as a mechanism to keep basic service rates low by assigning costs to the interstate jurisdiction. The End-User Charge is a form of recovery that occurs after the separations process. It is a federal charge and is usually separately identified on the local bill and should be considered separate from the basic monthly charge.

#### **E. SECTION 254(k)**

---

<sup>10</sup> See Declaratory Ruling in CC Docket 96-98 (rel. February 26, 1999, at ¶23.

<sup>11</sup> See the Report at p. 9.

Ameritech differs with the Report's conclusions that "(i)t would therefore, violate § 254(k) of the Communications Act if interstate services, which generally are not protected services, are allocated anything less than a 'reasonable share' of joint and common costs,"<sup>12</sup> and that separations is necessary to ensure that the appropriate share of joint and common costs is assigned to the interstate jurisdiction.

These conclusions are in error. §254(k) provides that "(t)he Commission, *with respect to interstate services*, and the States, *with respect to intrastate services*, shall establish any necessary cost allocation rules, accounting safeguards and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services."<sup>13</sup> (emphasis added). Therefore, the proper interpretation is that the FCC has the responsibility for ensuring that any *interstate* services included in the definition of universal service bear no more than a reasonable share of joint and common costs compared to other *interstate* services which are not included in the definition. Similarly, the state commissions have the responsibility for ensuring that any *intrastate* services bear no more than a reasonable share of joint and common costs compared to other *intrastate* services. In other words, each regulatory body, within the confines of its jurisdiction has the responsibility for the appropriate assignment of joint and common costs. Separations is not needed to accomplish this cost assignment, since it is done *after* costs have been separated between the jurisdictions. That is, the method of separations (current Part 36 Rules) is independent of the requirements of §254(k).

---

<sup>12</sup> *Ibid.* at p. 10.

<sup>13</sup> 47 U.S.C. 254(k).

In short, the Report erroneously concludes that compliance with §254(k) “requires affirmative acknowledgment of its explicit requirements in three regulatory processes: separations, state ratemaking and federal ratemaking”.<sup>14</sup> In fact, only the latter two processes are required for compliance with §254 (k).

#### **F. COMPETITIVE SERVICES**

The Report concludes that the current system of identification of costs associated with nonregulated services and their subsequent removal from those costs identified as “subject to separations” is inadequate. Ameritech strongly disagrees.

The scope of the Part 64 process is greatly understated in the Report. Part 64 applies to all services that (1) have never been subject to regulation and (2) those that have been preemptively deregulated. Ameritech has over twenty different services that are subject to Part 64’s detailed principles and requirements on the assignment and reporting of service costs. Part 64 results are scrutinized by independent auditors and the FCC to ensure compliance with the Federal Rules. (See 47 CFR §§64.901 through 64.904).

The purpose of the Report’s discussion seems to be the desire to reengage the debate over the Part 64 pre/post separations issue that was resolved in 1986. At that time, the FCC concluded that Part 64 should occur prior to separations in order, in part, to avoid separations-type distortions on the Part 64 cost causation principles and process.<sup>15</sup>

Part 64 has extensive requirements and reporting on the allocation of joint and common costs. Yet the Report asserts that Part 64 is under-allocating joint and common costs prior to the separations process. The rules and procedures regarding allocation of

---

<sup>14</sup> See the Report at p. 10.

<sup>15</sup> See Report and Order in CC Docket No. 86-111(rel.) February 6, 1987, at ¶ 116.

costs in Part 64 are more detailed and under more scrutiny than separations allocations in Part 36. Allocation does not occur until direct assignment through analysis is completed.

In conclusion, the Report does not offer anything new or compelling in support of their assertion that the existing system is inadequate

#### **G. MODIFIED STRUCTURE**

Ameritech has long supported separations reform. Reform of the existing separations process has been a subject of discussion by the regulators and the industry for many years. All parties generally agree that when a competitive environment is achieved, separations will no longer be necessary. Therefore, the Commission should approach reform with an eye to the future and to temper the efforts of separations reform with the knowledge that competition is likely to replace regulation in the next few years.

Ameritech and USTA have proposed to freeze the apportionment factors and the categorized relationships of the process during a transition to a sufficiently competitive market, when the process would be eliminated. Inexplicably, the Report fails to address this proposal, choosing instead to focus on the GTE/US West proposal. The latter proposal is attractive in its goal to create a regulatory environment that would not require jurisdictional separations. However, it does not go far enough in that ILECs would still be subject to rules and regulations that would not apply to their competitors. In short, the GTE/US West proposal creates an unnecessary step in the transition to the elimination of separations.

#### **H. TRANSITIONAL REFORM**

It is unclear what benefit will be derived from the adoption of the Report's recommended three-year rolling average proposal for interim separations reform. The

proposal would increase the burden of maintaining the separations process. In order to implement a three-year rolling average, each incumbent local exchange carrier (ILEC) would have to develop an interface three times the size it is today. This interface would require three complete sets of separations data which includes all the accounting inputs, Part 64 data, separations categories and separations factors. In addition, an ILEC would be required to adjust the previous years to incorporate separations changes which have been adopted at the time of implementation. This procedure would most certainly cause a revenue requirement shift, which would for most companies be unrecoverable in the current environment of price caps, rate moratoria and other incentive regulation plans.

While touting the benefits of this proposal, the Report states that it would “address concerns regarding new technology and service offerings by assuring that revenues and costs are assigned to the jurisdiction with tariff approval authority”. It is neither clear that the rolling average proposal accomplishes this, nor that it offers any benefits beyond essentially maintaining the status quo.

The Report also proposes to incorporate both the historical changes into prior year data and to include any “cleanup items which may surface in the *comment* process. Also of concern is that the proposed use of historical data could result in retroactive ratemaking. In contrast, Ameritech’s plan has no revenue requirement shift between jurisdictions. Finally, since the Report fails to provide a sufficient cost/benefit analysis<sup>16</sup> to allow evaluation, it is not clear that any incremental benefit can come from adoption of the three year rolling average proposal. Ameritech has shown that its freeze proposal is

---

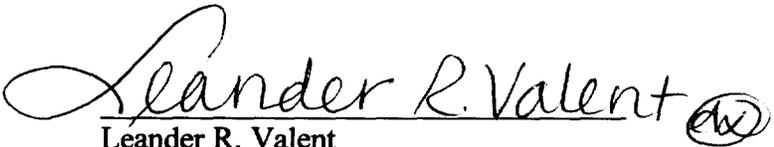
<sup>16</sup> See NPRM at ¶23, requesting that reform proposals achieve a balance among three criteria: (a) competitive neutrality, (b) administrative simplicity, and (c) principles of cost causation.

competitively neutral, requires very little implementation effort, is easily understood and eliminates the arbitrary link between separations results and prices.<sup>17</sup>

**III. CONCLUSION**

For the reasons stated above and in its prior Comments in this proceeding, Ameritech respectfully urges the Joint Board/Commission to reject the three year rolling average proposal, and recommend/adopt an interim freeze of the separations process as proposed by USTA and Ameritech. This approach will best anticipate the day when the separations process is made wholly unnecessary as competition removes the need for regulation itself.

Respectfully submitted,

A handwritten signature in cursive script that reads "Leander R. Valent" followed by a circled monogram "LRV".

Leander R. Valent  
Counsel for Ameritech  
9525 West Bryn Mawr, Suite 600  
Rosemont, IL 60018  
(847) 928-4396

Dated: March 30, 1999

---

<sup>17</sup> See Ameritech Comments filed December 10, 1997 in this matter, p. 10.

**CERTIFICATE OF SERVICE**

I, Debb J. Krocka, do hereby certify that a copy of Ameritech's Comments on the State Members' Report has been served on the parties on the attached service list, via first class mail, postage prepaid, on this 30<sup>th</sup> day of March, 1999.

By: Debb J. Krocka (N)  
Debb J. Krocka

MARTHA S HOGERTY ESQUIRE  
NASUCA  
SUITE 550  
1133 15<sup>th</sup> STREET NW  
WASHINGTON, DC 20005

JEFFREY F. BECK  
JILLIS A BRONFMAN  
BECAK & ACKERMAN  
SMALL WESTERN LECS  
SUITE 760  
FOUR EMBARCADERO CENTER  
SAN FRANCISCO, CA 94111

CYNTHIA R BRYANT  
ASSISTANT GENERAL COUNSEL  
MISSOURI PUBLIC SERVICE  
COMMISSION  
P O Box 360  
JEFFERSON CITY, MO 65102

FRED WILLIAMSON & ASSOCIATES  
INC  
SUITE 200  
2921 E 91<sup>ST</sup> STREET  
TULSA, OKLAHOMA 74137

MICHAEL T SKRIVAN  
HARRIS SKRIVAN & ASSOCIATES LLC  
SUITE 450  
8801 SOUTH YALE  
TULSA, OKLAHOMA 74137

LAURA H PHILLIPS  
J G HARRINGTON  
SCOTT S PATRICK  
COX COMMUNICATIONS INC  
SUITE 800  
1200 NEW HAMPSHIRE AVENUE NW  
WASHINGTON, DC 20036

DAVID A IRWIN  
IRWIN CAMPBELL & TANNENWALD  
PC  
ITCS INC  
SUITE 200  
1730 RHODE ISLAND AVE  
WASHINGTON, DC 20036-3101

GAIL L POLIVY  
GTE SERVICE CORPORATION  
SUITE 1200  
1850 M STREET NW  
WASHINGTON, DC 20036

MARGOT SMILEY HUMPHREY  
KOTEEN & NAFTALIN LLP  
TDS TELECOMMUNICATIONS CORP  
SUITE 1000  
1150 CONNECTICUT AVENUE NW  
WASHINGTON, DC 20036

JAMES S BLASZAK  
KEVIN DILALLO  
AD HOC TELECOMMUNICATIONS USERS  
COMMITTEE  
SUITE 900  
2001 L STREET NW  
WASHINGTON, DC 20036

EDWARD SHAKIN  
BELL ATLANTIC TELEPHONE  
EIGHTH FLOOR  
1320 NORTH COURT HOUSE ROAD  
ARLINGTON, VA 22201

STEVEN T NOURSE  
JUTTA MARTIN  
PUBLIC UTILITIES COMMISSION OF OHIO  
7<sup>TH</sup> FLOOR  
180 E BROAD ST  
COLUMBUS, OHIO 43215-3793

BENJAMIN H DICKENS JR  
GERALD J DUFFY  
WESTERN ALLIANCE  
BLOOSTON MORDKOFKY JACKSON  
& DICKENS  
2120 L STREET NW  
WASHINGTON, DC 20037

SNAVELY KING MAJOROS  
O'CONNOR & LEE INC  
SUITE 410  
1220 L STREET NW  
WASHINGTON, DC 20005

JEFFREY S LINDER  
SUSZANNE YELEN  
KENNETH J KRISKO  
GTE SERVICE CORPORATION  
1776 K STREET NW  
WASHINGTON, DC 20006

JOHN F RAPOSA  
GTE SERVICE CORPORATION  
P O BOX 152092  
IRVING, TX 75015

CYNTHIA B MILLER  
SENIOR ATTORNEY  
FLORIDA PUBLIC SERVICE COMMISSION  
2540 SHUMAD OAK BOULEVARD  
TALLAHASSEE, FL 32399-0850

KAREN FINSTAD HAMMEL  
MONTANA PUBLIC SERVICE COMMISSION  
1701 PROSPECT AVENUE  
P O BOX 202601  
HELENA, MONTANA 59601-2601

MICHAEL J ETTNER  
EMILY C HEWITT  
GEORGE N BARCLAY  
GENERAL SERVICES ADMINISTRATION  
ROOM 4002  
1800 F STREET NW  
WASHINGTON, DC 20405

PETER M BLUHM ESQ  
VERMONT PUBLIC SERVICE BOARD  
DRAWER 20  
MONTPELIER, VERMONT 05620-2701

SAM COTTON  
CHAIRMAN  
ALASKA PUBLIC UTILITIES COMMISSION  
SUITE 300  
1016 WEST SIXTH AVENUE  
ANCHORAGE, ALASKA 99501

STEVE HAMLEN  
PRESIDENT  
UNITED UTILITIES INC  
5450 A STREET  
ANCHORAGE, ALASKA 99518

RICHARD A ASKOFF  
NATIONAL EXCHANGE CARRIER  
ASSOCIATION INC  
100 SOUTH JEFFERSON ROAD  
WHIPPANY, NEW JERSEY 07981

PETER ARTH JR  
EDWARD W O'NEILL  
ELLEN LEVINE  
PEOPLE OF THE STATE OF  
CALIFORNIA & THE PUBLIC  
UTILITIES COMMISSION  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102

**PAT WOOD III  
JUDY WALSH  
PUBLIC UTILITY COMMISSION OF  
TEXAS  
P O BOX 13326  
1701 N CONGRESS AVENUE  
AUSTIN, TX 78711-3326**

**NANCY RUE  
FROST & JACOBS LLP  
CINCINNATI BELL TELEPHONE  
COMPANY  
2500 PNC CENTER  
201 EAST FIFTH STREET  
CINCINNATI, OHIO 45202**

**DIANE MUNNS  
WILLIAM H SMITH JR  
IOWA UTILITIES BOARD  
LUCAS STATE OFFICE BUILDING  
DES MOINES, IOWA 50319**

**DAVID COSSON  
L MARIE GUILLORY  
R SCOTT REITER  
NTCA  
2626 PENNSYLVANIA AVE NW  
WASHINGTON, DC 20037**

**TERESA MARRERO  
SENIOR REGULATORY COUNSEL  
FEDERAL  
TWO TELEPORT DRIVE  
STATEN ISLAND, NY 10311**

**GENE C SCHAERR  
JAMES P YOUNG  
SCOTT M BOHANNON  
AT&T CORP  
1722 I STREET NW  
WASHINGTON, DC 20006**

**JOHN STAURULAKIS INC  
EMMANUAL STAURULAKIS  
PRESIDENT  
6315 SEABROOK ROAD  
SEABROOK, MARYLAND 20706**

**MARGOT SMILEY HUMPHREY  
NRTA  
KOTEEN & NAFTALIN LLP  
SUITE 1000  
1150 CONNECTICUT AVE NW  
WASHINGTON, DC 20036**

**JAMES T HANNON  
US WEST INC  
SUITE 700  
1020 19<sup>TH</sup> STREET NW  
WASHINGTON, DC 20036**

**THOMAS E TAYLOR  
SR VICE PRESIDENT  
CINCINNATI BELL TELEPHONE COMPANY  
6<sup>TH</sup> FLOOR  
201 EAST FOURTH STREET  
CINCINNATI, OH 45202**

**M ROBERT SUTHERLAND  
RICHARD M SBARATTA  
BELLSOUTH CORPORATION  
BELLSOUTH TELECOMMUNICATIONS INC  
SUITE 1700  
1155 PEACHTREE STREET NE  
ATLANTA, GEORGIA 30309-3610**

**MARY MCDERMOTT  
LINDA KENT  
US TELEPHONE ASSOCIATION  
SUITE 600  
1401 H STREET NW  
WASHINGTON, DC 20005**

**ROBERT N KITTLE  
CECIL O SIMPSON JR  
OFFICE OF THE JUDGE ADVOCATE  
GENERAL  
US ARMY LIGITATION CENTER  
SUITE 713  
901 N STUART STREET  
ARLINGTON, VIRGINIA 22202-1837**

**ALAN BUZACOTT  
MCI TELECOMMUNICATIONS CORP  
1801 PENNSYLVANIA AVENUE NW  
WASHINGTON, DC 20006**

**KEITH TOWNSEND  
HANCE HANEY  
US TELEPHONE ASSOCIATION  
SUITE 600  
1401 H STREET NW  
WASHINGTON, DC 20005**

**LEON M KESTENBAUM  
JAY C KEITHLEY  
H RICHARD JUHNKE  
SPRINT CORPORATION  
11<sup>TH</sup> FLOOR  
1850 M STREET NW  
WASHINGTON, DC 20036**

**CAROLYN MORRIS  
ASSISTANT DIRECTOR  
FEDERAL BUREAU OF INVESTIGATION  
NINTH STREET & PENNSYLVANIA AVE NW  
WASHINGTON, DC 20535**

**CHRIS BARRON  
TCA INC  
SUITE 1  
3617 BETTY DRIVE  
COLORADO SPRINGS, CO 80917**

**LISA M ZAINA  
STEPHEN PASTORKOVICH  
SUART POLIKOFF  
OPASTCO  
SUITE 700  
21 DUPONT CIRCLE NW  
WASHINGTON, DC 20036**

**MARK C ROSENBLUM  
PETER H JACOBY  
JUDY SELLO  
AT&T CORP  
ROOM 324511  
295 NORTH MAPLE AVENUE  
BASKING RIDGE, NEW JERSEY 07920**

**SUSI RAY MCCLELLAN  
RICK GUZMAN  
TEXAS OFFICE OF PUBLIC UTILITY  
P O BOX 12397  
1701 N CONGRESS AVENUE 9-180  
AUSTIN, TEXAS 78711-2397**

**KENNETH T BURCHETT  
VICE PRESIDENT  
GVNW INC  
7125 S W HAMPTON  
PORTLAND, OREGON 97223**