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LAW OFFICES
KOTEEN & NAFTALIN, L.L.P.
1150 CONNECTICUT AVENUE
WASHINGTON, D.C. 20036-4104

BERNARD KOTEEN*
ALAN Y. NAFTALIN
ARTHUR B. GOODKIND
GEORGE Y. WHEELER
MARGOT SMILEY HUMPHREY
PETER M. CONNOLLY
CHARLES R. NAFTALIN
GREGORY C. STAPLE
R. EDWARD PRICE
JULIE A. BARRIE
* SENIOR COUNSEL

TELEPHONE
(202) 467-5700
TELECOPY
(202) 467-5915

April 14, 1999

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FEDERAL COMMUNICATIONS COMMISSION
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Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.,
Washington, D.C. 20554

Re: CC Docket No. 80-286

Dear Ms. Salas:

Transmitted herewith, on behalf of TDS Telecommunications Corporation (TDS Telecom or TDS), are an original and 4 copies of its reply comments concerning the State Members' Report on Comprehensive Review of Separations, CC Docket No. 80-286.

In the event of any questions concerning this matter, please communicate with this office.

Very Truly Yours,

Margot Smiley Humphrey

Margot Smiley Humphrey

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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

REPLY COMMENTS OF TDS TELECOMMUNICATIONS CORPORATION

TDS Telecommunications Corporation (TDS Telecom), by its attorneys, files these reply comments to respond to comments on the State Joint Board members' report in the above-captioned proceeding. Based on the record compiled in this proceeding, the Commission should (a) adopt an immediate freeze in the separations usage factors to stem unjustified shifts in interstate costs into the intrastate jurisdiction without adequate interstate cost recovery and (b) return to a more comprehensive reevaluation of separations when it has resolved the pending universal service, access and local competition issues at the heart of the 1996 Act's new telecommunications policy regime.

An Immediate Interim Freeze Is Necessary

TDS Telecom agrees with commenters such as AT&T (p. 2), Sprint (p.1) and MCI (p.2) that the Commission need not rush to complete full and comprehensive reform of the separations

process, but should carry out its other regulatory reform duties first (MCI, p. 2,9). Universal service and access issues, as well as remand issues in the local competition proceeding require attention before the necessary coordination of the results there with more comprehensive separations reform. However, we strongly disagree with arguments by these same commenters (AT&T at 2-3; Sprint at 9-10; MCI at 8) that there is no need for interim separations relief to prevent unwarranted cost shifts to intrastate. To the contrary, the record makes it clear that an immediate interim freeze of the separations factor is essential to prevent further distortions, at an increasing pace, in separations and cost recovery results owing to the widespread misclassification of Internet access costs as intrastate. An interim freeze will stem the rapid growth of the Internet usage distortion while the Commission not only continues with implementation of the 1996 Act, but also crafts a solution to the regulatory and political issues raised by cost recovery for Internet access costs.[1]

The Commission Neither Plans Higher Interstate Access Rates Nor Expects Higher Local Rates to Recover Increases in Intrastate-Allocated Internet Access Costs

Internet usage is growing explosively, and the changing usage pattern is shifting increasing costs into the intrastate jurisdiction by operation of the usage factors designed for circuit-switched voice service, as ILEC comments explain (e.g., NECA et al. at 2-5). Yet, the

[1] AT&T goes beyond the questions raised by the state members to rehash its arguments about marketing costs, unspecified "hidden " plant investment and the claimed superiority of a loop allocation set at 15% rather than the 25% gross allocator that now applies. The record in the proceeding demonstrates that there is neither a need nor a policy justification for the changes AT&T wants, and AT&T has not added anything of substance by repeating its assertions in commenting on the state members' report.

Commission has not provided for any alternative interstate recovery from the information service providers (ISPs) whose exemption from access charges causes this anomalous relegation of interstate access costs via intrastate (local) rates. In fact, the Commission has left no doubt that it has no plans to remove the exemption from interstate access charges for ISPs to impose any share of the access costs on them or Internet users.

While admitting that the Commission has ruled that Internet access costs are largely interstate, MCI pretends (pp. 4-5) that the current situation is satisfactory because the Commission has said (a) that this interstate access service should be provided under incumbent local exchange carriers' (ILECs') local business end user tariffs and (b) that these costs should be treated as "intrastate."[2] "The states," claims MCI "can then take these costs into account when regulating the local business rates that are paid by the ISPs." However, the law does not permit the Commission to identify interstate costs and tell the states to recover them. The whole point of the confiscation role played by jurisdictional separations since the Smith case — and acknowledged by the state members' report and many of the comments — is that the jurisdictional responsibility for cost recovery cannot be divorced from the regulatory authority to regulate rates. The Texas Public Utilities Commission articulates this fundamental connection, even though it had tried to claim state authority for the first link in an Internet call as local, and

[2] Sprint asks the Commission (p. 3) to delay any separations relief until MCI's judicial challenge to the Commission's jurisdictional ruling is decided. Sprint's request sheds some light on MCI's true reason for opposing further actions to adopt interstate separations assignment and cost recovery measures consistent with the Commission's ruling that Internet access falls within its interstate jurisdiction.

thus intrastate, use. "If all calls involving Internet usage are classified as interstate," the Texas PUC correctly points out (p.2), "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." The Commission has not done that.

Nor has the Commission given the states free rein to regulate recovery of these interstate costs that are supposedly treated as "intrastate" for cost recovery purposes.[3] Indeed, Chairman Kennard has stated unequivocally in a public document designed to reassure Internet providers and users that: (a) "Consumers will see no new charges on their Internet or phone bills" and (b) "States have no power to impose long distance charges [on Internet access]" because "[o]nly the FCC can do that, and we declared our jurisdiction over this traffic."[4] Consequently, even assuming that sufficient intrastate costs were included in the current local business rates charged to ISPs to cover their costs misallocated to intrastate so far, the FCC does not expect the continuing and accelerating cost shifts to intrastate owing to the growing distortion in the separations factors to be recovered from Internet providers or users. If the states impose those costs on other state ratepayers, the Commission will have imposed the kind of implicit subsidy that Sprint (p. 2) urges it to avoid.

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[3] MCI at 5.

[4] Answers from FCC Chairman William E. Kennard to Questions Concerning the Action Taken by the FCC on February 25, 1999, Concerning Reciprocal Compensation for Dial-Up Internet Traffic (http://www.fcc.gov/Bureaus/Common_Carrier/Factsheets/faq_recp.html).

With interstate costs continuing to shift to intrastate and no rate relief in sight for ILECs, there is no justification for AT&T's breezy assurance (p. 2) that "separations reform to deal with potential confiscation issues is unnecessary." Indeed, an immediate interim freeze of the separations factors is necessary, despite AT&T's spurious concern that an interim freeze might dampen incentives for additional separations reform, if the Commission expects intrastate rates to remain the same. The freeze would forestall what could otherwise become massive cost shifts into the intrastate jurisdiction while the Commission figures out a lawful and politically acceptable interstate recovery mechanism that avoids usage-sensitive Internet charges.

There is little support for the three year rolling freeze the state Joint Board members suggest. Even the Texas PUC endorses it (p.5) only for short-time use. There is wide agreement that the rolling freeze would be needlessly complex (e.g., Sprint, p. 9; Ameritech, p. 9). And MCI's lukewarm statement (p. 7) that it would be offer only "[m]arginal [a]dvantages" over the ILEC freeze proposal rests on MCI's erroneous claim that the Commission has solved the problem of misallocating interstate costs to intrastate if it also unlawfully looks to the states to recover the misallocated costs. The "ILEC freeze" of separations factors based on a period before the explosive Internet growth distortions is a far superior interim way to prevent further distortions.

Section 254 Does Not Raise Issues for this Joint Board

Some commenters (see, e.g., Texas PUC at 4) support the state Joint Board members in the notion that Parts 64 and 36 and section 254(k) must all be reconciled in the course of

separations reform to ensure that costs are properly allocated not only between jurisdictions, but also among regulated and unregulated services. However, Ameritech reminds the Commission (p. 6) that Section 254(k) expressly imposes separate state and Commission responsibility to see that universal services bear only a reasonable share of the joint and common costs in each regulator's jurisdiction. And Sprint (pp. 7-9) explains that Part 64 is working well to segregate regulated and unregulated services, including new unregulated services, for §254(k)'s purposes, as it points out (p. 8) that the Commission itself has held. In contrast, AT&T's proposal (p. 3) to remove unbundled network elements before the separations process "analogous to the ways costs associated with deregulated services" are excluded is at odds with the need to separate costs that are regulated to ensure against confiscation. Indeed, the UNE costs, undeniably regulated under §§251-52, which AT&T would remove as fully recovered are currently subject to claims of confiscation before the Eighth Circuit.

Conclusion

The comments demonstrate that the Commission should adopt the immediate interim freeze of separations factors advocated by TDS Telecom to stanch the unlawful hemorrhage of interstate costs into the intrastate jurisdiction caused by treating Internet access costs as if they were intrastate, when they are "largely interstate." Efforts to rationalize ignoring that harmful situation and doing nothing or turning to separations issues with far less impact on consumers or

carriers should not distract the Commission from what is plainly necessary: an interim freeze on separations factors while the Commission completes the crucial tasks of reforming universal service and access charges to ensure nationwide availability of evolving services in the competitive and deregulatory environment ushered in by the Telecommunications Act of 1996.

Respectfully submitted,

TDS TELECOMMUNICATIONS CORPORATION

By: /s/ Margot Smiley Humphrey
Margot Smiley Humphrey

KOTEEN & NAFTALIN, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
(202) 467-5700
margot.humphrey@koteen.com

April 14, 1999

CERTIFICATE OF SERVICE

I, Victoria C. Kim, of Koteen & Naftalin, hereby certify that true copies of the foregoing Reply Comments of TDS Telecom concerning the State Members' Report on Comprehensive Review of Separations, CC Docket No. 80-286, have been served on the parties listed below, via first class mail, postage prepaid on the 14th day of April 1999.

* Magalie Roman Salas (one original, four copies)
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-A325
Washington, D.C. 20554

*International Transcription Services, Inc. (ITS)
1231 20th Street, N.W.
Washington, D.C. 20036

*The Honorable Susan Ness, Commissioner
Federal Communications Commission
445 12th Street, S.W.
Suite 8B115
Washington, D.C. 20554

The Honorable David W. Rolka, Commissioner
Pennsylvania Public Utility Commission
North and Commonwealth Streets
Harrisburg, PA 17105-3265

The Honorable Joan H. Smith, Commissioner
Oregon Public Utility Commission
550 East Capitol Street, NE
Salem, OR 97310-1380

The Honorable Thomas L. Welch, Chairperson
Maine Public Utilities Commission
242 State Street, State House Station 18
Augusta, ME 04333-0018

Sandra Ibaugh
Indiana Utility Regulatory Commission
Indiana Government Center South
302 West Washington, Suite E-306
Indianapolis, IN 46204

Samuel Loudenslager
Arkansas Public Service Commission
1000 Center Street
Little Rock, AR 72201

Johnathan Lakritz
California Public Utilities Commission
California State Building
505 Van Ness Avenue
San Francisco, CA 94102-3298

Scott Potter
Ohio Public Utilities Commission
180 East Broad Street
Columbus, OH 43215-3793

James Bradford Ramsay
NARUC
P.O. Box 684
Washington, D.C. 20044-0684

Jeffrey J. Richter
Wisconsin Public Service Commission
610 North Whitney Way
Madison, WI 53705

Joel Shiftman
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta, ME 04333-0018

Frederick Sistarenik
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Judy Sello
Mark C. Rosenblum
AT&T CORP.
Room 3245I1
295 North Maple Avenue
Basking Ridge, NJ 07920

Jay C. Keithley
Sprint Corporation
1850 M Street N.W., 11th Floor
Washington, D.C. 20036-5807

Sandra K. Williams
Sprint Corporation
4220 Shawnee Mission Pkwy, Suite 303A
Westwood, KS 66205

Alan Buzacott
MCI WORLDCOM, Inc.
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Richard A. Askoff
Regina McNeil
National Exchange Carrier Association, Inc. (NECA)
100 South Jefferson Road
Whippany, NJ 07981

L. Marie Guillory
Jill Canfield
National Telephone Cooperative Association (NTCA)
2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

Kathleen A. Kaercher
Stuart Polikoff
OPASTCO
21 Dupont Circle, N.W.
Suite 700
Washington, D.C. 20036

Pat Wood, III
Judy Walsh
Brett Perlman
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

Leander R. Valent
Counsel for Ameritech
9525 West Bryn Mawr
Suite 600
Rosemont, IL 60018

Philip F. McClelland, Esq.
Joel H. Cheskis, Esq.
Office of Consumer Advocate
Office of Attorney General
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923

* denotes hand delivery

Victoria C. Kim