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July 13, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Jurisdictional Separations Reform and Referral to the Federal-State Joint Board -- CC Docket No. 80-286

Request for an En Banc Meeting of the Full Separations Joint Board

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Dear Ms. Salas,

On June 17, 1999, the State Members of the Federal-State Joint Board on Separations wrote to Chairman Kennard and Commissioners Ness and Powell, requesting an *en banc* meeting of the full Separations Joint Board in CC Docket 80-286.¹

The State Member's letter highlights several recent developments affecting jurisdictional separations -- most notably, two recent Commission orders on the jurisdictional nature of Internet traffic, and a recent letter from the Common Carrier Bureau to Southwestern Bell regarding treatment of Internet traffic in separations studies.² The State Members point out that increasing levels of Internet traffic, changes in network technologies, and numerous other factors, are raising fundamental separations and jurisdictional issues. The State Members accordingly propose an *en banc* meeting of the full Joint Board, to be held as soon as September of this year, to address the effects of these issues on the jurisdictional separations rules.

NECA agrees that immediate action is needed to resolve separations issues associated with Internet traffic. This issue is becoming critical for local exchange carriers, especially the small rural carriers that are most affected by distortions in separations factors caused by Internet traffic. While the Commission certainly should respond positively to the State Members' request for an *en banc* meeting, interim relief should not await the results of a Joint Board meeting in the Fall.

¹ See Letter from State Members, The Federal-State Joint Board on Separations, to William Kennard, Chairman of the Federal Communications Commission (FCC), Susan Ness, FCC Commissioner, and Michael Powell, FCC Commissioner at 1 (June 17, 1999) (on file with the FCC).

² *Id.*, referencing GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148, *Memorandum Opinion and Order*, 13 FCC Rcd 22466 (1998); 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 and 99-68, *Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, 64 F.R. 14239 (1999); and Letter from Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC to Dale Robertson, SBC Communications (May 18, 1999).

Rather, the Commission should take interim action *now* to maintain reasonable jurisdiction cost allocation results, pending the outcome of this proceeding.

Throughout the course of this proceeding NECA and other commenters have urged the Commission to update the separations rules to reflect changes in network usage and new technology.³ Internet traffic, in particular, is causing significant distortions in separations results for small rate of return carriers. Contrary to the Common Carrier Bureau's recent letter to Southwestern Bell, the Commission's rules provide no basis for treating interstate traffic as anything other than interstate for jurisdictional separations purposes.

Requiring rate of return carriers instead to treat this traffic as intrastate in their separations studies improperly shifts significant amounts of interstate costs to the state jurisdiction. Carriers seeking to recover these costs may need to file a state rate case to consider the increased allocations. Since the Commission has declared the relevant traffic to be interstate, however, local ratepayers may strongly object to any attempt to recover these shifted costs via local rate increases. In the end, carriers may well be prevented from recovering these interstate revenue requirements in either jurisdiction. Faced with the prospect of unrecoverable costs, carriers ultimately may be prevented from investing in network upgrades needed to handle increasing traffic loads associated with dial-up Internet traffic.

NECA and other industry representatives repeatedly have called for rapid interim relief to "freeze" separations factors, so as to preserve the *status quo* pending Commission action on separations reform. Similarly, NECA and other parties have suggested that Internet traffic could be eliminated from traffic factor development.⁴ Prompt Commission action on these interim proposals could help mitigate the separations distortions cited by the State Members of the Joint Board. In any event, as the State Members appear to recognize, interim action is needed now, even before an *en banc* meeting is convened. Further, if an *en banc* hearing is held, NECA would like to participate to describe the adverse effects upon rural companies resulting from the current treatment.

Very truly yours,



Richard A. Askoff

³ See, e.g., The Rural Telephone Coalition Comments on Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, *Notice of Proposed Rulemaking*, 12 FCC Rcd 22120 (1997)(NPRM) (Dec. 10, 1997); United States Telephone Association Comments on NPRM (Dec. 10, 1997); Dobson Telephone Company and McCloud Telephone Company Comments on NPRM (Dec. 10, 1997); and NECA Reply to NPRM (Jan. 26, 1998).

⁴ See, e.g., NECA Petition for Waiver of Section 36.2(a)(3) of the Commission's Rules (fil. May 8, 1998). See also Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket No. 80-286, *State Members Report on Comprehensive Review of Separations* (fil. Dec. 21, 1998)(proposing a three-year rolling average of separations factors as an interim solution to anomalies affecting separations results.)