

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

JOINT REPLY

The National Exchange Carrier Association, National Rural Telecom Association, National Telephone Cooperative Association, and Organization for the Promotion and Advancement of Small Telecommunications Companies (together, the Associations) submit this reply in the matter captioned above.¹ In Joint Comments filed in this proceeding, the Associations strongly supported the Joint Board's call for interim action that would provide simplicity and stability in the jurisdictional separations process, and urged the Commission to adopt the interim freeze immediately.²

¹ Comment Sought on Recommended Decision Issued By Federal-State Joint Board On Jurisdictional Separations, CC Docket No. 80-286, *Public Notice*, DA 00-1865 (rel. Aug. 15, 2000) (*Public Notice*). Comments were due in response to the *Public Notice* on September 25, 2000.

² Associations, at 2. The Associations recommended *immediate* implementation of the freeze, including an adjustment to local dial equipment minutes (DEM). Additionally, the Associations strongly supported the Joint Board recommendations for a freeze of allocation factors for rate-of-return carriers, and encouraged the Commission to provide for a optional one-time freeze of part 36 category relationships for these carriers, at the start of the freeze. The Associations also said: if the Commission adopts a twelve-month period for base data used to develop frozen factors, it should use data from carriers' most recent annual cost studies at time of implementation; Commission rules should enable development of allocation factors where none previously existed, and pointed out that the per-line ratio advocated by the Joint Board would not achieve its desired result (a

I. PARTIES AGREE THAT IMMEDIATE ACTION IS NECESSARY TO ARREST DISTORTIONS OCCURRING NOW, BECAUSE INTERNET-RELATED TRAFFIC COSTS ARE BEING MIS-ALLOCATED

A broad spectrum of parties, not limited to incumbent local exchange carriers (ILECs), generally endorse the Joint Board's recommendations.³ General Services Administration (GSA) said it "concur[s] with the recommendation for the freeze because of the need to provide stability for all carriers"⁴ BellSouth stated "a freeze contributes to the long term goals of providing simplicity and stability to the jurisdictional separations process."⁵ United States Telecom Association (USTA) said it "fully agrees with the (Joint Board's) assessment that a freeze . . . is appropriate . . .", and also urges the Commission to "permit ROR [rate-of-return] carriers to calculate allocation factors for new categories of investment using current period data."⁶ Further, USTA said "the

composite factor) in an exchange transfer, if the acquiring carrier did not have the specific category of investment prior to the transaction.

³ Verizon, at 2; CHR Solutions, at 1-4; Telecom Consulting Associates, at 1; General Services Administration, at 4 SBC, at 1-3; Qwest, at 4-5 ("Qwest supports the Joint Board's proposal for a five-year freeze"); Pennsylvania Public Utilities Commission, at 5; John Staurulakis, Inc., at 2 ("is in agreement with the Joint Board's recommended decision to freeze separations factors for rate-of-return carriers"); Telephone Association of New England (TANE), at 1 ("generally supports the recommendation of the Joint Board that the Commission freeze separations factors"). Interestingly, WorldCom does not oppose the Joint Board's recommended freeze. *See WorldCom Comments*, generally.

⁴ GSA, at 4. GSA also states that "a moratorium is required for stability."

⁵ BellSouth, at 3. The Associations concur, and also agree with commenters saying no new reporting or re-calculation of jurisdictional allocation factors should be required during the interim freeze, because this would only add to the complexity the Joint Board seeks to eliminate. *See*, for example, USTA, at 8; SBC, at 3; Qwest at 6-8.

⁶ USTA, at 7 and 9. *See also* note 2, *supra*. The Associations proposed in Comments that the Commission should provide for the development of allocation factors in cases where none previously existed, such as in exchange transfers or average schedule to cost conversions.

Commission should have as the paramount goal . . . the objective to institute the five-year interim separations freeze."⁷ Verizon observed that "a freeze will result in 'more predictable separations results', which will encourage the deployment of 'new services and technologies in the marketplace'."⁸ The Associations agree, and urge the Commission to act swiftly to stem the continuing distortion of separations results caused by the unprecedented growth of local network usage, now widely acknowledged as attributable to Internet-bound calls.

AT&T objects to the recommended freeze.⁹ AT&T states that "(f)rozen factors would almost guarantee an ever-growing inaccuracy in the jurisdictional separations

⁷ *Id.*, at 12.

⁸ Verizon, at 2, citing *Recommended Decision*, para. 17.

⁹ AT&T's objections are particularly, and transparently, self-serving. AT&T recognizes, on one hand, that "such a freeze would prevent additional costs from being assigned to the intrastate jurisdiction as a result of rapid growth of Internet traffic which is treated as intrastate for separations purposes." AT&T, at 2. On the other hand, AT&T ignores the inconsistency between this jurisdictional treatment for separations, and the Commission's recognition that Internet traffic is, in fact, jurisdictionally *interstate* in nature. If these costs were assigned to the interstate jurisdiction for separations purposes, consistent with the actual nature of the traffic, it is likely that interstate access costs charged to AT&T, and all interstate access customers, would increase. AT&T attempts to evade this obvious point with a tired recitation of the Internet service provider (ISP) exemption rule, claiming a potential mismatch between revenues and costs, if Internet-related costs are shifted to interstate. AT&T, at 4. The ISP exemption from access charges is a long-standing rule, but the issue of jurisdiction of Internet traffic, *inter alia*, is presently being considered by the FCC in its *Reciprocal Compensation* proceeding. *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689 (1999), *Declaratory Ruling vacated and remanded sub nom. Bell Atlantic Telephone Company v. FCC*, Nos. 99-1094, *et al.* (D.C. Cir. Mar. 24, 2000). Notwithstanding the continuing deliberations regarding the jurisdiction of Internet-bound traffic, the treatment of this traffic as 'local' remains a serious issue, and continues to distort separations

allocations. . . ."¹⁰ But the separations process has never been an exact science. It is, of necessity, imprecise. As Verizon points out, "regardless of the separations method, the division of costs between jurisdictions is arbitrary. . . . As the Commission has recognized, the shared costs of these [commonly inter- and intrastate-used] facilities 'cannot be allocated on the basis of cost-causation principles'."¹¹ In a similar vein, Qwest observes that, "(d)espite the level of detail inherent in [the separations process], the results were 'less than scientific', and were more often the product of political compromises than reflective of the cost characteristics of telephone plant."¹²

BellSouth said that "a jurisdictional separations freeze is a pragmatic approach to reforming jurisdictional separations that results in a reasonable allocation of responsibilities between the state and federal jurisdictions."¹³ Similarly, Telecom Consulting Associates (TCA) states "(w)hile there are several options for the Commission to consider in mitigating the impact Internet traffic is having on separations factors, freezing traffic factors is the best alternative at this time."¹⁴

results. Thus, the interim freeze should be implemented now, regardless of the Commission's determination in *Reciprocal Compensation*.

¹⁰ AT&T, at 6.

¹¹ Verizon, at 3 (note omitted).

¹² Qwest, at 12.

¹³ BellSouth, at 3.

¹⁴ TCA, at 3.

Nor is this proposed interim freeze the end-game. To the extent other issues have been presented in this proceeding on the separations freeze,¹⁵ those issues can and should be addressed via the Joint Board and Commission's comprehensive separations reform. The interim freeze is a single step in that process, but one that must be taken *now*.

II. BROAD GENERAL SUPPORT EXISTS FOR AN ADJUSTMENT TO LOCAL DEM. THE COMMISSION SHOULD IMPLEMENT THIS CHANGE AT THE START OF THE INTERIM FREEZE.

Most parties, while not agreeing on the Joint Board's proposed level of local DEM adjustment, generally affirm that a reduction of some magnitude is warranted. For example, Qwest stated "(w)hile [it] believes that it would be inappropriate to attribute a specific portion of DEM to Internet usage and make a corresponding adjustment for purposes of a freeze, Qwest does not object to the use of the 95 percent default rate. . . ."¹⁶ The Pennsylvania Public Utilities Commission (PaPUC) said that, "(i)f Internet traffic is jurisdictionally interstate, the local and interstate DEM factors should immediately be recalculated and frozen to reflect the cost shifts associated with the interstate classification." (emphasis in original)¹⁷ VPSB said that "it is possible to model

¹⁵ See, for example, AT&T, at 7 (treatment of marketing and customer service expense); and WorldCom, at 7 (treatment of UNEs and new technologies); California Public Utilities Commission, at 18 (consolidation of loop, trunk, switching, and operator systems categories proposed previously by Southwestern Bell).

¹⁶ Qwest, at 10.

¹⁷ PaPUC, at 8. PaPUC is concerned that the 5 percent proposed reduction is inadequate, basing its position on the premise that significant increases in local minutes since 1995 principally are due to the increase in local network traffic attributable to Internet-bound calls. *Id.*, at 9. Likewise, VPSB's cogent analysis of the potential effects of the Joint Board's recommended DEM adjustment concludes that "the five percent estimate would

the effects of proper separations adjustments that should follow the Commission's assertion of jurisdiction over the Internet. . . . (i)f these adjustments are not made, a significant and unjustified financial burden would fall on local customers to support an interstate service."¹⁸ The record shows that, among supporters of a DEM adjustment, opinions vary regarding details such as the appropriate adjustment percentage.¹⁹ But these differences of opinion should not deter the Commission from acting on the Joint Board's recommendation now.

In its comments, TANE states "(w)hile [it] believes that the five percent difference [local DEM adjustment recommended by the Joint Board] would not reflect enough adjustment, it is important that relative separations factors be frozen at once, rather than wait for resolution of an extended debate over a more accurate number."²⁰ As stated in the Associations' Comments, the Commission should adopt the Joint Board recommendation for a 5 percent local DEM reduction, to be implemented at the start of the interim freeze, to remove anomalous Internet traffic conditions.²¹ The Associations again strongly urge the Commission to adopt these recommendations *now*, regardless of pending considerations of Internet traffic jurisdiction issues.

capture approximately one-sixth of the probable Internet usage in June 2003, the mid-point of the five-year freeze." VPSB, at 1.

¹⁸ *Id.*, at 7.

¹⁹ See Associations Comments at note 18. See also Notice of Ex Parte Presentation, Letter to Magalie Roman Salas, Federal Communications Commission from Lora Magruder, NECA, CC Docket 80-286 (Nov. 29, 1999); and Letter to Lawrence E. Strickling, Federal Communications Commission from Richard A. Askoff, NECA, CC Docket No. 80-286 (Oct. 5, 1999).

²⁰ TANE, at 2.

II. CONCLUSION

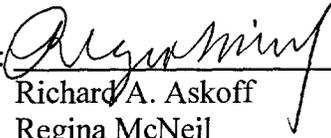
The majority of commenters in this proceeding support the Joint Board's recommendation for a freeze of separations factors, including an adjustment to local DEM. While there is some disagreement among supporting parties about the amount of adjustment to DEM, and other details, the Associations urge the Commission to recognize the importance of implementing the Joint Board's recommended interim freeze *now*. No harm will be caused by freezing allocation factors for rate-of-return carriers while the Commission moves ahead to accomplish more comprehensive separations

²¹ Associations, at 7. *See also* CHR Solutions, at 2-3.

reform. Implementing the interim freeze will instead arrest the distortion of jurisdictional cost recovery that worsens with the burgeoning growth of Internet traffic.

Respectfully submitted,

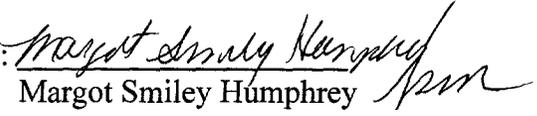
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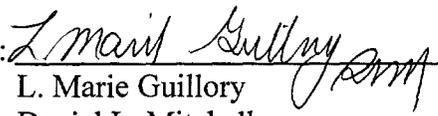
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I hereby certify that copy of the Joint Reply was served this 10th day of October 2000, by electronic delivery, hand delivery or first class mail, to the persons listed below.

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