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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

THE UNITED STATES TELECOM ASSOCIATION'S REPLY COMMENTS REGARDING THE *RECOMMENDED DECISION* ISSUED BY THE FEDERAL-STATE JOINT BOARD ON JURISDICTIONAL SEPARATIONS

I. INTRODUCTION

Pursuant to 1.415 and 1.419 of the Federal Communications Commission's (Commission) rules,[1] the United States Telecom Association (USTA) hereby submits its reply comments in the above-captioned proceeding.[2] USTA urges the Commission to adopt the recommendation for a five-year separations freeze, with the limited modifications discussed in USTA's earlier-filed comments and those that appear in Appendix A hereto.

II. BACKGROUND

The Federal-State Joint Board on Jurisdictional Separations (JB) adopted and released its Recommended Decision (*RD)* in July of 2000.[3] The Commission issued a public notice[4]

1 47 C.F.R. §§ 1.1415, 1.1419 (1998).

2 USTA comprises approximately 800 incumbent local exchange carriers that are directly affected by the Commission's actions in this docket.

3 *See In re Jurisdictional Separations Reform and Referral to the Federal-State* JB, Recommended Decision, CC docket No 80-286, FCC 00J-2, adopted, Jul. 19, 2000 and released, Jul. 21, 2000 (recommended decision by the Federal-State JB on Jurisdictional Separations (Recommended Decision).)

4 FCC Public Notice, "Comment Sought on Recommended Decision Issued by Federal-State JB on Jurisdictional Separations", CC Docket No. 80-286, DC 00-1865, released, Aug. 15, 2000

seeking public comment about the *RD*. USTA has been very proactive in this proceeding.[5] USTA had submitted a separations freeze proposal to the JB, as generated by the USTA Separations Reform Analysis Program (Proposal); and also filed comments on September 25, 2000,[6] regarding the *RD*.

USTA's comments stated that the Commission should adopt the JB's *RD*, with the modifications recommended by USTA.[7]

(establishing a comment and reply comment schedule, respectively, for Sept. 25, 2000 and Oct. 10, 2000).

5 *See In re Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, FCC CC Docket No. 80-286: "Comments of the United States Telephone Association", Dec. 10, 1997; "Reply Comments of the United States Telephone Association", Jan. 26, 1998; *Ex Parte* letters from Porter E. Childers, USTA Legal and Regulatory Affairs Executive Director to Magalie Roman Salas, FCC Secretary dated Nov. 3, 1999, Jan. 27, 2000 (two different letters)(USTA Jan. *ex parte*), Feb. 2, 2000 (four different letters), Feb. 7, 2000, Feb. 8, 2000, Feb. 9, 2000, Feb. 10, 2000 and Feb. 11, 2000

6 *See* USTA Jan. 27 *ex parte*; and "The United States Telecom Association's Comments Regarding The Recommended Decision Issued By The Federal-State Joint Board On Jurisdictional Separations" in FCC CC Docket No. 80-286 (Sept. 25, 2000).

7 For both price cap carriers and ROR carriers, USTA believes the freeze should be implemented on January 1, 2001. Local exchange carriers (LECs) subject to price cap regulation and Part 36 of the Commission's rules should freeze their study area specific separations allocation factors at the annual levels for the period ending December 31, 2000, using the procedures in effect at the time as specified in each of the applicable sections. Non-price cap carriers subject to Part 36 of the Commission's rules should also freeze their study area specific category relationships and separations allocation factors at the annual levels for the period ending December 31, 2000, unless doing so would require performing a cost study. In such case, a non-price cap carrier may freeze their study area specific separations allocation factors at the annual level for the period ending December 31, 1999. USTA Comments at i-iii, 1-3. ROR carriers would continue following the current categorization process, but should have a one-time election at the initiation of the freeze to either freeze both factors and category relationships on a study area by study area basis, or file a waiver petition with the Commission. *Id. See, also,* USTA initial comments and Appendix A.

And to the extent that the JB recommends the Commission prohibit adjustments during the freeze, USTA agrees with this approach, but submits that it is necessary to allow for an adjustment in a limited instance. USTA recommends that the Commission permit ROR carriers to calculate allocation factors for new categories of investment using current period data. These new factors would then be frozen and used for subsequent cost studies.

Inter alia, USTA said that, in principle, it believes that a freeze should be a total freeze in that traffic studies should not be required in the future, during the pendency of the freeze. But that, insofar as the JB believes that the Commission should allow the local Dial Equipment Minutes (DEM) to be reduced based on a default of 5% or an amount to be determined from data supplied by the industry, USTA can support the *RD* as a reasonable compromise when considering the JB's *RD* in its entirety. USTA firmly believes that it is in the public interest to institute the five-year interim separations freeze, effective January 1, 2001, notwithstanding any reasonable modifications to the *RD* that the Commission deems necessary. The freeze will produce sorely needed stability for both carriers and regulators.

III. USTA COMMENTS

A. Broad-Based Industry Support Exists For A Freeze.

Like USTA, most of the commenters support an interim jurisdictional separations freeze.[8] Given the JB's *RD,* the comments in support of the interim freeze and the significant

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8 *See*, e.g., the comments filed on September 25, 2000, by the following parties (either supporting or not challenging the notion of a jurisdictional separations freeze) in CC Docket No. 80-286: BellSouth Corporation and BellSouth Telecommunications Inc. (BellSouth) (BellSouth supports the adoption of a freeze for jurisdictional separations, supports USTA's proposal and specifically recommends a freeze of allocation factors based on the procedures in effect at the time of the freeze) at 3; CHR Solutions, Inc. (CHR) (a freeze of allocation factors for rate-of-return (ROR) carriers is appropriate) at 2; General Services Administration (GSA)(supports freeze of allocation factors for ROR carriers, but not for price-cap carriers) at 4, 8; GVNW Consulting, Inc. (GVNW)(is not opposed to freezing portions of the process, that the freeze as proposed in the *RD*, with minor modifications, will provide an equitable distribution for the majority of GVNW's client companies) at 1-2; Joint Comments of the National Exchange Carrier Association, Inc., National Telephone Cooperative Association, National Rural Telecom Association, and Organization for the Promotion and Advancement of Small Telecommunications Companies (Joint Associations)(the Joint Associations generally support the *RD* and urge the Commission to adopt the interim freeze immediately, taking into consideration the Joint Associations' suggestions, at 2; and that the Commission allow ROR carriers, on a study area basis, a one-time election to freeze category relationships, at 4-5); John Staurulakis, Inc. (JSI)(overall, JSI is in agreement with the JB's *RD* to freeze separations factors for ROR carriers) at 2; Pennsylvania Public Utility Commission (PaPUC)(supports a "bifurcated" approach to the freeze, agrees that Part 36 category relationships freeze would harm smaller ROR carriers, but would not harm price-cap carriers) at 7; Qwest Corporation (Qwest, formerly U S West Communications, Inc.)(supports JB's *RD* to freeze Part 36 category relationships and jurisdictional allocations factors so the Commission can "buy the time" necessary, as an intermediate step to

factual and legal justifications for the freeze, the Commission should readily adopt an interim jurisdictional separations freeze.

USTA's members are strongly supportive of a separations-freeze, effective January 1. 2001, and USTA urges that the Commission adopt the JB's *RD,* consistent with the modifications recommended by USTA in this proceeding. To further assist the Commission, in this regard, USTA has drafted proposed rules/procedures for implementing the separations freeze.[9] The proposed rules/procedures are attached as Appendix A hereto.

B. The Commission's Readily Adopting the Interim Freeze is Imperative, Regardless of Any Local DEM Adjustment.

USTA supports the JB's *RD* as a reasonable compromise when viewed in its entirety. USTA and its members believe that the paramount goal of this effort should be to institute a

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Communications, Inc.)(supports JB's *RD* to freeze Part 36 category relationships and jurisdictional allocations factors so the Commission can "buy the time" necessary, as an intermediate step to dramatically reform its existing separations rules and deregulate competitive services and minimize the harm of existing jurisdictional cost allocation rules) at 2; SBC Communications Inc. (SBC)(agrees with JB that a freeze of the Part 36 category relationships and jurisdictional allocation factors for price cap carriers is appropriate) at 1; The Telephone Association of New England (TANE)(generally supports the JB recommendation that the Commission freeze separations factors, with TANE's recommended modifications) at 1; Telcom Consulting Associates (TCA)(agrees with JB's *RD* regarding the freezing of factors and the different treatment of categories freeze of ROR carriers and price cap carriers) at 1; The Verizon Telephone Companies (Verizon)("The [JB] correctly determined that a freeze of separations factors and relationships 'will provide much needed simplification and stability to the separations process.' The proposed freeze will prevent arbitrary separations changes from distorting the marketplace. The Commission should approve this policy determination and implement such a freeze." At 1 (emphasis added); the Vermont Public Service Board (VPSB)(did not directly comment in support or opposition to the freeze, but expressed comment on the impact of Internet traffic growth on jurisdictional separations since 1995) at 1; WorldCom, Inc. (WorldCom)("If the Commission adopts the [JB's] recommendation for a freeze of jurisdictional allocation factors, all factors should be frozen based on data from the twelve months pri9r to the Commission's issuance of an order) at 1. By contrast, two commenters oppose the freeze: AT&T Corp. (AT&T) at 1-3, 8; and, The People of the State of California and the California Public Utilities Commission (California) at 3-18, 21-22.

9 *See*, BellSouth comments at 3, with emphasis added: "With regard to a specific approach to accomplish the separations freeze, USTA has been an active participant in the Commission's endeavors to reform jurisdictional separations including a proposal for a separations freeze. In its [reply] comments on the [*RD*], USTA submits specific procedures for implementing a freeze. BellSouth supports USTA's proposal. . . ."

reasonable and fair separations freeze by January 1, 2001, and to ultimately eliminate separations entirely. Numerous opinions have been expressed about a local DEM adjustment, including recommendations advocating a default adjustment at the start of the freeze, adjusting the local DEM now, making a 20% adjustment at the start of the freeze, making no adjustment at all.[10] The Commission, though, should not allow these differing views to get in the way of implementing a freeze which virtually all interested parties believe is in the public interest. Accordingly, USTA urges the Commission to respect the fact that the JB's *RD* represents a good compromise. Further, the Commission should not sacrifice the "good" in a quest for the "perfect." A separations freeze, effective January 1, 2001, represents good public policy and the Commission should so determine.

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10 *See, e.g.,* AT&T (Internet adjustment of 5% makes no sense.) at 3-6; BellSouth (an adjustment of the local DEM factor appears inconsistent with the purpose of a jurisdictional freeze. . .Freezing separations factors at current levels, without any adjustment to the local DEM factor, provides a reasonable allocation of costs in the aggregate.) at 4; California (freeze of the local DEM factor at 95% of current levels would be inadequate) at 3-4; CHR (local DEM should be adjusted to reflect Internet regardless of any future action by the FCC. Such an adjustment should be applied at the start of the interim freeze) at 2-3; GSA (concurs with the JB's recommendation concerning the DEM factor freeze) at 5-6; GVNW (5% adjustment is significantly low and a more realistic number should be used for the default value, the adjustment for Internet should move the appropriate number of minutes from local to interstate and the adjustment should apply to other factors that rely on these minutes; companies that can measure internet usage should make the adjustment based on their measurements. Companies that have no ISP in their free calling are should make no adjustment.) at 8-9; Joint Associations (the JB's DEM adjustment should be applied at the start of the interim freeze.) at 6-7; JSI (Internet usage should immediately be excluded from the development of a frozen local DEM factor, at 2; where the actual measurement is not feasible, the default estimate of 95 % suggested by the JB is inadequate; that a default percent representing 80% should be used, at 5-7); PAPUC (5% reduction of local DEM factors is insufficient) at 7-9; Qwest (does not object to the use of the 95% default rate which appears to represent a compromise between the Commission and state regulators) at 10; SBC (Internet traffic is jurisdictionally interstate and should be treated as such in the separations process) at 6; TANE (agrees with JB's recommendation regarding DEM adjustment, except does not believe Commission resolution of the nature of the traffic in the *Reciprocal Compensation Remand* proceeding is required before imposing the freeze) at 3; TCA at 2-3; Verizon (Commission should adopt the JB's proposed freeze, but reject the suggestion for a prior adjustment for Internet.) at 1, 4-8; VPSB (5% reduction of local DEM factors is insufficient; DEM and local loop factors should be adjusted to reflect interstate nature of Internet) at 1-10; WorldCom (reject JB's DEM adjustment proposal: No DEM factor "roll back" should be made to adjust for recent growth in

IV. CONCLUSION

USTA urges that the Commission readily adopt the JB's *RD* with the modifications recommended by USTA in its earlier-filed comments and those that appear in Appendix A hereto.

Respectfully submitted,

By: Julie E. Rones

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October 10, 2000

ISP-bound traffic if the Commission determines that the ISP-bound traffic is jurisdictionally interstate) at 1-8.

CERTIFICATE OF SERVICE

I, Gail Talmadge, do certify that on October 10, 2000 a copy of *The United States Telecom Association's Reply Comments Regarding the* Recommended Decision *Issued By The Federal-State Joint Board on Jurisdictional Separations,* CC Docket No. 80-286, was either hand-delivered or deposited in the U.S. Mail, first-class, postage prepaid, to the persons on the attached service list.

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Appendix A

PROPOSED October 10, 2000

FEDERAL COMMUNICATIONS COMMISSION

PART 36 - JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

AS AMENDED FOR SEPARATIONS FREEZE
EFFECTIVE JANUARY 1, 2001

PROPOSED

October 10, 2000

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Subpart A - General

§ 36.1 General.

(a) This part contains an outline of separations procedures for telecommunications companies on the station-to-station basis. These procedures are applicable either to property costs, revenues, expenses, taxes, and reserves as recorded on the books of the company or to estimated amounts.

(1) Where a value basis is used instead of book costs, the "costs" referred to are the "values" of the property derived from the valuation.

(b) The separations procedures set forth in this part are designed primarily for the allocation of property costs, revenues, expenses, taxes and reserves between state and interstate jurisdictions. For separations, where required, of the state portion between exchange and toll or for separations of individual exchanges or special services, further analyses and studies may be required to adapt the procedures to such additional separations.

(c) The fundamental basis on which separations are made is the use of telecommunications plant in each of the operations. The first step is the assignment of the cost of the plant to categories. The basis for making this assignment is the identification of the plant assignable to each category and the determination of the cost of the plant so identified. The second step is the apportionment of the cost of the plant in each category among the operations by direct assignment where possible, and all remaining costs are assigned by the application of appropriate use factors.

(d) In assigning book costs to categories, the costs used for certain plant classes are average unit costs which equate to all book costs of a particular account or subaccount; for other plant classes, the costs used are those which either directly approximate book cost levels or which are equated to match total book costs at a given location.

(e) The procedures outlined herein reflect "short-cuts" where practicable and where their application produces substantially the same separations results as would be obtained by the use of more detailed procedures, and they assume the use of records generally maintained by Telecommunications Companies.

(f) The classification to accounts of telecommunications property, revenues, expenses, etc., set forth in this manual is that prescribed by the Federal Communications Commission's Uniform System of Accounts for Telecommunications Companies.

(g) In the assignment of property costs to categories and in the apportionment of such costs among the operations, each amount so assigned and apportioned is identified as to the account classification in which the property is included. Thus, the separated results are identified by property accounts and apportionment bases are provided for those expenses which are separated on the basis of the apportionment of property costs. Similarly, amounts of revenues and expenses assigned each of the operations are identified as to account classification.

(h) The separations procedures described in this Part are not to be interpreted as indicating what property, revenues, expenses and taxes, or what items carried in the income, reserve and retained earnings accounts, should or should not be considered in any investigation or rate proceeding.

§ 36.2 Fundamental principles underlying procedures.

(a) The following general principles underlie the procedures outlined in this part:

(1) Separations are intended to apportion costs among categories or jurisdictions by actual use or by direct assignment.

(2) Separations are made on the "actual use" basis, which gives consideration to relative occupancy and relative time measurements.

(3) In the development of "actual use" measurements, measurements of use are:

(i) determined for telecommunications plant or for work performed by operating forces on a unit basis (e.g., conversation-minute-kilometers per message, weighted standard work seconds per call) in studies of traffic handled or work performed during a representative period for all traffic and (ii) applied to overall traffic volumes, i.e., 24-hour rather than busy-hour volumes.

(b) Underlying the procedures included in this manual for the separation of plant costs in an over-all concept which may be described as follows:

(1) Telecommunications plant, in general, is segregable into two broad classifications, namely,

(i) interexchange plant, which is plant used primarily to furnish toll services, and

(ii) exchange plant, which is plant used primarily to furnish local services.

(2) Within the interexchange classification, there are three broad types of plant, i.e., operator systems, switching plant, and trunk transmission equipment. Within the exchange classification there are four broad types of plant, i.e., operator systems, switching plant, trunk equipment and subscriber plant. Subscriber plant comprises lines to the subscriber.

(3) In general, the basis for apportioning telecommunications plant used jointly for state and interstate operations are:

(i) Operator work time expressed in weighted standard work seconds is the basis for measuring the use of operator systems.

(ii) Holding-time-minutes is the basis for measuring the use of toll switching plant.

(iii) Conversation-minute-kilometers or conversation-minutes is the basis for measuring the use of interexchange circuit plant and holding-time minutes is the basis for measuring the use of exchange trunk plant. While the use of holding-time-minute-kilometers is the basic fundamental allocation factor for interexchange circuit plant and exchange trunk plant, the use of conversation-minute-kilometers or conversation minutes for the allocation of interexchange circuit plant and holding-time minutes for the allocation of exchange trunk plant are considered practical approximations for separations between state and interstate operations when related to the broad types of plant classifications used herein.

(iv) A subscriber plant factor is the basis of apportioning the cost of message telecommunications subscriber plant and local switching plant between state and interstate operations. The subscriber plant factor is developed and used according to the procedures set forth in §§ 36.154(c) through 36.154(f).

(c) Property rented to affiliates, if not substantial in amount, is included as used property of the owning company with the associated revenues and expenses treated consistently: Also such property rented from affiliates is not included with the used property of the company making the separations; the rent paid is included in its expenses. If substantial in amount, the following treatment is applied:

(1) In the case of property rented to affiliates, the property and related expenses and rent revenues are excluded from the telephone operations of the owning company, and

(2) In the case of property rented from affiliates, the property and related expenses are included with, and the rent expenses are excluded from, the telephone operations of the company making the separation.

(d) Property rented to or from non-affiliates is usually to be included as used property of the owning company with the associated revenues and expenses treated consistently. In the event the amount is substantial, the property involved and the revenues and expenses associated therewith may be excluded from or included in the telecommunications operations of the company. When required, the cost of property rented to or from non-affiliates is determined using procedures that are consistent with the procedures for the allocation of costs among the operations.

(e) Costs associated with services or plant billed to another company which have once been separated under procedures consistent with general principles set forth in this part, and are thus identifiable as entirely interstate or State in nature, shall be directly assigned to the appropriate operation and jurisdiction.

§ 36.3 Freezing of jurisdictional separations allocation factors and/or account categorization levels.

(a) Effective January 1, 2001, local exchange carriers subject to price cap regulation shall freeze their study area specific separations allocation factors at the annual levels for the period ending December 31, 2000, using the procedures in effect at that time as specified in each of the applicable sections.

(b) Effective January 1, 2001, all other local exchange carriers shall freeze their study area specific separations allocation factors based on the carriers most recent annual study, which shall be no earlier than 1999 and no later than 2000, using the procedures in effect at that time as specified in each of the applicable sections.

(c) Effective January 1, 2001, local exchange carriers subject to price cap regulation shall freeze the separations categorization relationships relative to the associatedClass B account balances based on the annual data for the period ending December 31, 2000, using the procedures in effect at that time.

(1) Effective January 1, 2001, local exchange carriers not subject to price cap regulations may exercise a one-time election to freeze the separations categorization relationships relative to the associated Class B account balances based on the most recent annual study, which shall be no earlier than 1999 and no later than 2000, using the procedures in effect at that time. Local exchange carriers not choosing this election must continue the categorization as specified in each of the applicable sections.

(d) Any newly established local exchange carrier study area desiring cost company status will categorize telecommunications plant and expenses and develop separations allocation factors in accordance with the rules in this manual. The separationsallocation factors and/or account categorization will be frozen subject to the requirements of § 36.3 (a) or (b) and (c).

(e) Any local exchange company carrier study area that is party to a merger, acquisition , or similar transaction will adjust for the transaction in the following manner:

(1) The category relationships and the separations allocation factors established in accordance with § 36.3 (a) or (b) for the selling study area will not change. Only when entire categories are sold the categorization relationships of the selling carrier shall be adjusted to reflect this change.

(2) The purchasing study area category relationships and separations allocation factors shall be adjusted to reflect the entire study area, based on the weighted average of both the seller's and purchaser's existing frozen factors and frozen category relationships. This weighted average should be based on the number of access lines currently being served by the acquiring carrier and the number of access lines in the transferred exchanges. When entire categories are purchased, the purchasing carrier shall adopt the frozen allocation factor from the selling carrier for that category and recalculate the frozen category relationships to reflect the new category.

(f) Any local exchange carrier converting from average schedule to cost status will categorize telecommunications plant and expenses and develop separations allocation factors in accordance with the rules outlined in this Part. The separations allocation factors and account categorization will be frozen subject to the requirements of § 36.3 (a) or (b) and (c).