

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Jurisdictional Separations Related to)	CC Docket No. 80-286
Communications Assistance for Law)	
Enforcement (CALEA) and Referral)	ET Docket No. 04-295
to the Federal-State Joint Board)	

COMMENTS OF QWEST CORPORATION

Qwest Corporation (“Qwest”) respectfully submits its comments to the Federal-State Joint Board (“Joint Board”) on Jurisdictional Separations in response to the Joint Board’s request for comment concerning how CALEA-related costs and revenues should be allocated for jurisdictional separations purposes.¹

I. INTRODUCTION AND SUMMARY

Qwest believes that the CALEA issues raised in the Joint Board’s *Public Notice* are inextricably intertwined with the Federal Communications Commission’s (“Commission”) decision to freeze Part 36 category relationships and jurisdictional cost allocation factors² and that CALEA should not be addressed in isolation. Moreover, as discussed below, any CALEA-specific separations changes should be closely scrutinized to insure that carriers subject to Part 36 are not disadvantaged. In short, CALEA-related

¹ *Public Notice*, Federal-State Joint Board on Jurisdictional Separations Seeks Comment on Communications Assistance for Law Enforcement Act (CALEA) Issues, CC Docket No. 80-286; ET Docket No. 04-295, DA 05-535, rel. Mar. 2, 2005.

² *In the Matter of Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Report and Order*, 16 FCC Rcd 11382 (2001) (“Freeze Order”).

issues are just one set of many important issues that should be addressed in the context of comprehensive separations reform.³

The Commission has already acknowledged that existing Part 36 jurisdictional separations rules are out-of-date and based on an industry structure (*i.e.*, assumption of monopoly power in local markets) and technology that have largely ceased to exist.⁴ This is why the Commission decided to freeze separations category relationships and factors as of July 1, 2001.⁵ In adopting its separations freeze, the Commission stated “[T]he freeze will be in effect for five years from July 1, 2001, to June 30, 2006, or until the Commission has completed comprehensive reform of the Part 36 separations rules, whichever comes first.”⁶ Given the pending expiration of the separations freeze in 15 months, Qwest urges the Joint Board and the Commission to focus on comprehensive separations reform rather than “piece meal” revisions of out-dated Part 36 rules to accommodate CALEA.

³ For example, the Commission has already concluded that the separations treatment of Internet traffic and other important issues should be addressed in the context of comprehensive separations reform. *Id.* at 11383-84 ¶ 2, 11399-403 ¶¶ 34-42.

⁴ *Id.* at 11383-87 ¶¶ 1-8.

⁵ “Specifically, we take action to freeze, on an interim basis, the Part 36 jurisdictional separations rules, in order to stabilize and simplify the separations process while we continue to work on more comprehensive separations reform. The current Part 36 separations regime, which has been largely unmodified for the past several decades, was developed when local telephone service was provided largely through circuit-switched networks operated by companies with monopoly power in the local market, with clear delineation between interstate and intrastate services. Since the enactment of the Telecommunications Act of 1996, however, and the growing presence of new, high-bandwidth technologies and services in the local market, including the Internet, the telecommunications landscape has changed significantly, and lines between interstate and intrastate services are becoming increasingly blurred. In addition, with the emergence of some competitive local exchange providers, we need to reexamine regulatory structures that apply only to incumbent local exchange carriers.” *Id.* at 11383 ¶ 1.

⁶ *Id.* at 11387-88 ¶ 9.

II. ANY CALEA-SPECIFIC CHANGES TO THE COMMISSION'S PART 36 RULES WOULD BE INCOMPATIBLE WITH THE SEPARATIONS FREEZE

CALEA investments and expenses have not been specifically identified and accounted for either prior to the Commission's separations freeze or during the freeze. Traditionally, investments and expenses have been identified by equipment category, not type of product. The same has been true of CALEA investments and expenses which have not been separately identified in the Uniform System of Accounts ("USOA").

For example, a significant portion of CALEA-related investment is assigned to Account 2212, Digital Electronic Switching. Under the Part 36 rules, this investment is classified as Local Switching Equipment – Category 3 and allocated based on DEM (Dial Equipment Minutes).⁷ The Commission froze the DEM allocation factor along with all other separations factors and category relationships in its *Freeze Order*.⁸ In doing so, the Commission also relieved carriers of the obligation to perform traffic studies (e.g., relative use studies such as those used to produce DEM factors).⁹

Any unilateral CALEA-related separations adjustments -- whether based on direct assignment, relative use, or some other allocator -- would be incompatible with the requirements of the Commission's *Freeze Order* since any such adjustment would affect

⁷ 47 C.F.R. § 36.125.

⁸ *Freeze Order*, 16 FCC Rcd at 11402-03 ¶¶ 40-42. In freezing separations factors, the Commission declined to adopt the Joint Board's recommendation that the DEM factor be reduced to adjust for the effects of increased Internet usage. Furthermore, the Commission specifically identified DEM and Internet usage as areas to be addressed in its comprehensive review of Part 36.

⁹ *Id.* at 11395 ¶ 23.

frozen factors and category relationships.¹⁰ Contrary to the assertion of GVNW, the direct assignment of CALEA costs would “adversely impact” the separations freeze.¹¹ To support its claim, GVNW cites selected language in paragraph 23 of the *Freeze Order*.¹² In doing so, GVNW conveniently ignores the preceding sentence which makes it clear that the Commission’s language that GVNW is citing applies only to costs that were “directly assigned” prior to the freeze¹³ -- which was not the case for CALEA costs. In fact, direct assignment of CALEA costs would have an adverse impact on frozen category relationships and would be a direct violation of Section 36.3(b) of the Commission’s rules (*i.e.*, for price cap incumbent local exchange carriers (“ILECs”)).¹⁴

¹⁰ While the Commission’s *Freeze Order* did not totally preclude adjustments during the life of the freeze, it strictly limited them and in no way contemplated adjustments for individual products/projects such as CALEA. *See id.* at 11387-88 ¶ 9 and 11394-95 ¶¶ 22-24. “With limited exceptions, no adjustments to the frozen category relationships and allocation factors will be allowed during the freeze.” *Id.* at 11387-88 ¶ 9.

¹¹ Comments of GVNW, CC Docket No. 80-286 and ET Docket No. 04-295, dated Apr. 1, 2005 at 9.

¹² “Specifically in paragraph 23, the Commission indicated ‘...the frozen factors shall not have an affect on the direct assignment of costs for categories, or portions of categories, that are directly assigned. Since those portions of facilities that are utilized exclusively for services within the state or interstate jurisdiction are readily identifiable, we believe that the continuation of direct assignment of costs will not be a burden on carriers, nor will it adversely impact the stability of separations results throughout the freeze.’” *Id.*

¹³ “Categories or portions of categories that have been directly assigned in the past, however, will continue to be directly assigned to each jurisdiction. In other words, the frozen factors shall not have an effect on the direct assignment of costs for categories ...” *Freeze Order*, 16 FCC Rcd at 11395 ¶ 23.

¹⁴ *See* 47 C.F.R. § 36.3(b) which states: “Effective July, 2001, through June 30, 2006, local exchange carriers subject to price cap regulation, pursuant to §61.41, shall assign costs from the part 32 accounts to the separations categories/sub-categories, as specified herein, based on the percentage relationships of the categorized/sub-categorized costs to their associated part 32 accounts for the twelve month period ending December 31, 2000. If a part 32 account for separations purposes is categorized into more than one category, the percentage relationship among the categories shall be utilized as well. Local exchange carriers that invest in types of telecommunications plant during the period July 1, 2001, through June 30, 2006, for which it had no separations category investment for

Furthermore, given the treatment of CALEA-related investments and expenses under existing separations rules, it makes no sense to address CALEA issues separately. The Commission has already recognized that the separations rules “are broken” and need comprehensive reform. It would be a waste of the Joint Board’s, Commission’s and carriers’ resources to do anything other than address CALEA-related issues within the context of comprehensive separations reform. Moreover, any CALEA-related separations revisions -- whether the product of a comprehensive separations review or a separate effort -- should not be implemented until after the expiration of the separations freeze.

III. ANY CALEA-SPECIFIC SEPARATIONS CHANGES SHOULD BE CLOSELY SCRUTINIZED TO INSURE THAT CARRIERS SUBJECT TO PART 36 ARE NOT DISADVANTAGED

CALEA requirements apply to a much broader group of telecommunications carriers than the Commission’s Part 36 rules (which only apply to incumbent local exchange carriers).¹⁵ In referring CALEA issues to the Joint Board, the Commission instructed the Joint Board to “focus on the foregoing issues only insofar as they pertain to entities subject to jurisdictional separations.”¹⁶ However, in doing so, the Joint Board cannot ignore the fact that ILECs compete against many telecommunications carriers that are not subject to the Commission’s Part 36 rules. The Joint Board must be cognizant of

the twelve month period ending December 31, 2000, shall assign such investment to separations categories in accordance with the separations procedures in effect as of December 31, 2000.”

¹⁵ See *Freeze Order*, 16 FCC Rcd at 11384-85 ¶ 3 and n.5; 47 C.F.R. § 36.112(b) and § 32.11(a).

¹⁶ *In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access Services, Notice of Proposed Rulemaking and Declaratory Ruling*, 19 FCC Rcd 15676, 15741-42 ¶ 138 (2004).

and avoid any CALEA-related Part 36 changes that may disadvantage ILECs vis-à-vis competitors not subject to the Part 36 rules. This is one more reason why CALEA-related separations changes should be addressed in the context of comprehensive separations reform rather than separately.

IV. CONCLUSION

For the forgoing reasons, Qwest urges the Joint Board and the Commission to address CALEA-related separations changes in its upcoming comprehensive review of the Part 36 rules and not separately. In addition, any CALEA-related separations changes should be implemented post-freeze and at the same time as other separations reforms.

Respectfully submitted,

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April 1, 2005

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST CORPORATION** to be: 1) filed with the FCC via its Electronic Comment Filing System in CC Docket No. 80-286 and ET Docket No. 04-295; 2) served, via e-mail on Ms. Sheryl Todd of the Wireline Competition Bureau at sheryl.todd@fcc.gov; and 3) served, via e-mail on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com.

Richard Grozier
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