

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Jurisdictional Separations and Referral to the) CC Docket No. 80-
286)
Federal State Joint Board) FCC Docket No. 06-
70)
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**THE COMMENT OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission (PaPUC) submits this Comment in response to the FCC's Notice of Proposed Rulemaking on Separations published in the Federal Register on May 24, 2006 at FR 29843-29844 (Separations NOPR). The PaPUC Comment should not be construed as binding on the PaPUC in any proceeding before the PaPUC. The substantive concerns in the PaPUC Comment may change in response to subsequent developments including review of other filed Comments and developments at the state and federal levels.

The PaPUC supports extension of the Separations Freeze set forth in the Separations NOPR. The current freeze set forth on June 21, 2001 at 66 Federal Register 33202 was set to expire on June 30, 2006 (the 2001 Separations Freeze).

The PaPUC notes that the FCC extended the current Separations Freeze without comment even though that freeze occurred over five years ago. The PaPUC understands that the press of other regulatory matters like

Intercarrier Compensation, IP-Enabled Services, and Universal Service complicated, and possibly prevented, opportunities for comment on this extension. Nevertheless, the PaPUC is concerned about opportunities for providing comment on proposed extensions on separations given the substantial intrastate rate implications.

Under the freeze extension, for example, the FCC and the States undertake a second step of assigning costs to regulated and unregulated services in accordance with Part 64 of the Commission's rules. This step ensures that non-regulated costs are not recovered from regulated costs.

However, this second step appears to be difficult to conduct given the exponential use of the local loop to provide increasingly federalized, and unregulated, information services using telecommunications equipment and networks. If the FCC had provided an opportunity for intrastate regulator comment prior to an extension that preserves this rule, the FCC could have received record suggestions on alternative allocation rules different from the continuation of formulas in the existing regulations.

For example, the PaPUC notes that Section 36.154(c) of the current regulations allocates 75% of the costs of the local loop to intrastate regulators and 25% of the cost of the local loop to interstate regulators. The separations freeze continues this status quo even though, by the FCC's own reports, there is exponential growth in the use of that local loop to deliver services that the FCC considers to be exclusively federal, and unregulated, information services. Continuation of the 75%-25% loop allocation formula set out in the current regulations imposes real costs on intrastate regulators

for expanded interstate services even as the FCC considers a new regulatory structure.

The PaPUC urges the FCC to recognize and address, in some kind of remedial fashion, the fact that this interim freeze imposes costs on intrastate regulators for growing interstate services. The PaPUC is concerned that intrastate regulators continue to assume responsibility for 75% of the regulated costs of the local loop even as the FCC “federalizes” newer services such as Digital Subscriber Line (DSL) service, Voice over Internet Protocol (VoIP), Broadband over Power Lines (BPL), and Internet Service Provider (ISP) services that often rely on this local loop. Moreover, access to the regulated local loop for these services is often determined by federal special access prices that ensure recovery of the 25% allocated to interstate services but not the 75% allocated to intrastate regulators.

The PaPUC suggests that the FCC address and remedy these kinds of disconnects in the final separations regulations. An unreasonable disconnect between allocating regulated costs to intrastate regulators, notwithstanding an exponential growth of “interstate” services and revenues attributable to these costs, may constitute an unacceptable “cost shift” to intrastate regulators. This could occur if local loop costs and other equipments charges are allocated primarily, if not exclusively, to intrastate regulators although the revenues attributable to use of these intrastate facilities and equipment are classified as “interstate” revenues. Moreover, the classification of new services and revenues from those services as “interstate” might erode the intrastate regulators’ ability to recover institutional costs through the traditional assessment on intrastate revenues.

For Pennsylvania, these “cost shifting” and “negative assessment” implications are aggravated by the fact that the Commonwealth’s major carrier, Verizon Communications Inc. (Verizon), is a net contributor to the federal universal service fund (FUSF). The PaPUC also recognizes, however, that some carriers in rural Pennsylvania are net recipients from the FUSF. The FCC’s decisions on separations should recognize this dilemma and address it as part of a comprehensive approach in this proceeding as well as the Intercarrier Compensation, IP-enabled Services, and Universal Service proceedings.

The PaPUC suggests a “holistic” separations approach. A “holistic” approach should reconcile the dynamics of technological change and the deployment of advanced services with the current practice of allocating an overwhelming percentage of local loop costs to intrastate regulators. A “holistic” approach should also address the net contributor role of some service providers in some regions of the country. One possible means to obtain the consensus needed on resolving these interconnected challenges could be a concerted effort to ensure the increased presence of intrastate regulators from net contributor states on those Joint Boards that are, or will be, examining portions of these “holistic” issues.

Otherwise, the PaPUC is concerned that the confluence of representational weaknesses and the growing gap between interstate and intrastate regulated cost allocations will place undue pressure on local rates and intrastate regulators. This could produce an inadvertent but real situation in which intrastate regulators are enmeshed in conflicts with the

FCC or other intrastate regulators on policy issues for reasons that are relatively avoidable.

The PaPUC also suggests that the FCC address the fact that some “local loops” continue to be regulated while others that are the functional equivalent of a local loop, such as BPL, cable, or wireless service facilities and equipment, are not.

The PaPUC urges the FCC to consider a consistent and technologically neutral approach to ensuring the recovery of allocated network costs in a manner that promotes broadband deployment and services on a comparable basis in rural and non-rural areas. One consistent solution might be rules in which equipment and network costs are allocated to all facilities and equipment in a nondiscriminatory fashion regardless of whether they constitute “information services” or “telecommunications” under recent FCC decisions. This approach may be warranted because many of the newer “information services” use equipment and loops that either rely on or must access the regulated local loop, or their equivalent, to deliver traditional and advanced services to end-users.

The PaPUC is concerned that continuation of a disparate regulatory structure premised on “telecommunications” or “information services” classifications may be more harmful than beneficial to the deployment of traditional and advanced services in the long run. The PaPUC suggests that the FCC consider and address the scope and applicability of cost allocation responsibilities in light of these concerns. This includes concerns about the FCC’s interpretation of “telecommunications” and “information services”

when classifying the nation's communications infrastructure under state and federal law.

The PaPUC appreciates the opportunity to file this Comment.

Respectfully submitted,
Pennsylvania Public Utility Commission

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