Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF THE IDAHO PUBLIC UTILITIES COMMISSION

Submitted by its Attorney:

Donald L. Howell, II
Deputy Attorney General
PO Box 83720
Boise, ID 83720-0074
(208) 334-0312
don.howell@puc.idaho.gov

August 22, 2006

TABLE OF CONTENTS

SUMMARY

The Idaho Public Utilities Commission ("Idaho") hereby submits comments regarding the appropriate goals for a new separations regime. The Commission should establish an "exit ramp" option for incumbent carriers to terminate their separations obligations only after examining the current uses of such separations data. Use of the "exit ramp" should be conditioned upon several factors set out in our comments. For those companies that remain subject to separations, Idaho believes that separation reforms should include: matching revenues and costs; matching jurisdictions with both revenues and costs; simplifying and reducing the overhead costs of separations; and excluding costs associated with non-regulated services.

Idaho further recommends that the frozen separations factors not be extended beyond 2009. The Commission and the Joint Board should consider: (1) adjusting the 75-25 fixed factor applicable to all loops; (2) adjusting the usage-based separation factors to account for ISP traffic and VoIP; and (3) adopting a new fixed factor for DSL and fiber loop, or a new separations method for DSL, fiber and other services that generate only interstate or preemptively non-regulated revenues.

The FNPRM also asks for comments on the effect that separations reform would have on the evaluation of interstate special access rates. Idaho asserts that special access circuits have significantly increased since 2000 resulting in separations outputs for special access seriously out of balance. This mismatch has been caused by the category freeze and an FCC Staff letter blocking parallel shifts in costs. Consequently, Idaho recommends the Commission and Joint Board should abandon the category freeze in 2009 and either: require a single-categorization study for at least special access lines when the freeze expires in 2009; or develop a new separations method for special access and other services that generate only interstate or

preemptively non-regulated revenues. Finally, Idaho recommends that the Commission and the Joint Board commit to updating the separations manual for the digital age by rewriting Part 36.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF THE IDAHO PUBLIC UTILITIES COMMISSION

I. INTRODUCTION

The Idaho Public Utilities Commission ("Idaho") hereby submit comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Further Notice of Proposed Rulemaking* ("*FNPRM*"), released May 16, 2006 as FCC 06-70.

II. GOALS

The FNPRM asked for comment about the goals that a new separations regime should pursue, and in particular regarding the enunciated goals for and principles underlying comprehensive separations reform as described in the "Glide Path" papers.[1]

A. An "Exit Ramp"

The Glide Path papers demonstrate that since the current Separations Manual[2] was written, the network has undergone fundamental change. One has been the gradual deregulation of incumbent LECs. Many states have now passed laws that permanently remove carriers from rate of return regulation by state commissions. As the 2005 Glide Path paper

[1] FNPRM ¶ 30.

[2] The Separations Manual is codified in 37 C.F.R. Part 36.

recognizes, this argues for the availability of a new and less burdensome separations regime for carriers in those states. If separations results are not relevant for any regulatory purpose, no carrier should bear the cost of conducting separations studies and reporting separations data. Accordingly, the FCC should establish an "exit ramp" option for incumbent carriers to terminate their separations obligations.

The appropriate conditions for carriers to actually exercise this "exit ramp" option may be surprisingly rigorous to some. Yet separations has become an element of many regulatory structures, and any decision to eliminate a carrier's separations data should be made only after carefully examining the current uses of that data.

Even where carriers have been "deregulated" or placed on price caps, separations data may still be needed, either by the company or by a regulator. In addition, some universal service programs depend upon separations data. For example:

- In the interstate jurisdiction most large carriers are on "price cap" regulation. For these carriers, switched access rates are set by rule at a uniform 0.55 cents per minute,[3] a rate that does not depend on annual cost separations calculations.[4] Nevertheless, separations rules can still affect these rates. Rates can be adjusted for "exogenous" factors if a carrier has low interstate earnings.[5] Separated costs are the starting point for calculating whether that precondition has been met.
- Smaller "rate-of-return" carriers use separation results directly in order to calculate interstate access rates. For carriers not participating in pools these

[3] *See* 47 C.F.R. § 61.3 (qq) (defining "Target Rate").

[4] *See* 47 C.F.R. § 69.152(d)(1). Subscriber Line Charges (SLCs) are also set by a formula that is not dependent on current separations results.

[5] *See* 47 C.F.R. § 61.45(b), (d)(1)(vii). Also, rates can be changed for "exogenous" factors if there are changes to separations rules. *See* 47 C.F.R. § 61.45(b), (d)(1)(iii). Exogenous changes, including separations changes, can also produce modifications to SLCs for any carrier not already charging the maximum SLC. *See* 47 C.F.R. § 69.104(n)–(p).

rates are calculated on a company-by-company basis. Most smaller carriers participate in the NECA pools and charge uniform industry-wide rates, but even here the calculation of rates, while aggregated across many companies, still depends upon separations results. In sum, for both pooled and unpooled "rate-of-return" carriers, separations controls the amount of interstate costs, which then controls both per-minute "switched access" rates and "special access" rates.[6]

- In the state jurisdiction, the company may also operate under a so-called "price cap" plan, yet the state commission may still have a responsibility to evaluate intrastate earnings.
- Likewise in the state jurisdiction, even though a carrier operates under a "price cap" or "alternative regulation" plan, it may appeal from the state commission's decision on the grounds that its rates are confiscatory in violation of the Fifth Amendment to the United States Constitution.
- The High Cost Loop program is intended to limit the intrastate cost of providing high-cost areas served by smaller "rural telephone companies." High Cost Loop Support depends on "study area average unseparated loop cost per working loop." This in turn depends upon separations rules (but not the allocation rules) used to categorize outside plant and central office facilities.[7]
- The "Local Switching Support" program depends upon each company's "projected annual unseparated local switching revenue requirement."[8] This number, in turn, depends upon the separations rules to categorize plant within central office plant accounts.

---

[6] NECA operates two different pools, a common line pool and a traffic sensitive pool. Each has separately identified costs, and each produces separate rates. The allocation of a carrier's overall costs into the two pools also relies on separations categories defined in 47 C.F.R. Part 36.

[7] *See* 47 C.F.R. § 36.631(c), (d). For example, support is provided for category 4.13 Circuit Equipment, which is a category of Central Office Equipment.

[8] *See* 47 C.F.R. §§ 54.301(a)(1).

- The "Interstate Common Line Support" program depends on each carrier's interstate "Common Line Revenue Requirement."[9] This in turn depends on the costs assigned to the interstate jurisdiction by separations rules.

To avoid creating downstream problems, a company should be allowed to take the "exit ramp" from separations only if several conditions are satisfied:

1. In the interstate jurisdiction, the company should waive the right to claim exogenous low-end rate adjustments.
2. The company should assert that it is deregulated in the state jurisdiction and waives all rights to subsequently claim an unconstitutional confiscation of its property.
3. The state commission should certify that it has no current use for separations results for that company, nor does it expect to have such a need.
4. The FCC should order that the company's universal service payments are frozen on the date of opt-out. This will allow USAC to continue calculating universal service support for the exiting carrier and others.
5. The FCC should order that the company will be excluded from future calculations of industry averages that depend upon categorization of plant or upon jurisdictional separation of plant, expenses or revenue amounts.

B. Other Goals

The previous section discussed how carriers might exit from separations requirements. All of the following discussion applies to the remaining companies that will continue to be subject to separations, in some form.[10] This section discusses some goals for separations reform for such carriers.

---

[9] *See* 47 C.F.R. § 54.901(a).

[10] Thirteen smaller ILECs in Idaho are rate-of-return regulated and are affected by separations results.

1. *Matching Revenue and Cost*

The 2005 Glide Path Paper observed that "[s]o long as there remain two jurisdictions, cost assignment should at least roughly follow jurisdictional authority and revenue assignment." Matching revenues with costs is a paramount principle. To the extent that separations cannot consistently achieve this, there will be several undesirable consequences.

First, the jurisdiction receiving the revenues will have an incentive to reduce rates. The temptation will be strongest when the service is competitive or one for which public policy seeks greater deployment. The optimum rate for a competitive service is its incremental cost, given the existence of all existing plant. Therefore, when cost is zero, the incentive is to set rates at zero.

Second, the jurisdiction receiving the costs may be required to raise rates on other services. This would certainly violate the principle of cost causality. It would also be likely to harm consumers who purchase inelastic services and consumers in areas with minimal or no competition, normally rural areas.

A cost-revenue mismatch would be likely to violate section 254(k) in two ways. To the extent that the service is competitive, it would likely fail to support its own costs and require contribution from less competitive services. It would thereby violate the first sentence of section 254(k), 47 U.S.C. § 254(k) (a carrier may not use services that are not competitive to subsidize services that are competitive).

In addition, the second sentence of section 254(k) would be violated if the telecommunication service produces revenue for the interstate jurisdiction, but sends costs to the state jurisdiction. To the extent that the state jurisdiction covers those costs by raising rates on local exchange,[11] that might require more than a reasonable share of joint and common costs from the local exchange service.

2. *Match Jurisdiction With Both Revenue and Cost*

The Glide Path paper also explained that it is important to match the regulatory jurisdiction over the price of a service with the cost of providing it. A mismatch of this type does not produce the immediate economic harm generated by a cost-revenue mismatch. A different form of harm is likely in this case.

A regulator will have unpredictable incentives if he or she can set rates for a service but has no responsibility to allow recovery of the associated costs. The path of least resistance would be to deregulate the price, and leave the consequences to the other regulator. Such arrangements will not be stable in the long run, and it will be highly unlikely for prices to reflect actual costs, because those costs have been moved to the other jurisdiction.

Moreover, a mismatch between costs and jurisdiction may also produce section 254(k) subsidy problems. In a competitive environment an unregulated carrier always has an incentive to subsidize its competitive services with revenues from its noncompetitive services. Also, many ILECs have some customers who have no competitive alternatives. An ILEC would have an incentive to collect more than a reasonable contribution to common costs from these customers.

---

[11] Several components of local exchange service are "service[s] included in the definition of universal service." *See* 47 U.S.C. § 254(k); *see also* 47 C.F.R. § 254(c) (definition of universal service).

3. *Simplify and Reduce Overhead Costs*

The Glide Path II paper observed that it may be desirable to reduce dependence on costly measurement techniques.[12] This is an important goal of separations reform. The burden of Separations falls uniquely on ILECs and in the future may fall increasingly on smaller and rural LECs. While these incumbents also benefit in unique ways from the regulatory system, reducing their overhead costs, which must ultimately be recovered in rates or high cost support, is nevertheless a valid goal.

Cost reduction can be accomplished most directly by simplifying the existing procedures. The FCC and the Joint Board should substantially reduce the complexity of the existing system, which requires a level of precision in some areas that greatly surpasses the precision of other, more financially significant, areas.

Much of the overhead cost of separations arises from usage studies. One possible simplification would be to move all usage-based factors to a single fixed factor for all companies.[13] This alone could reduce separations overhead costs substantially. Also, categorization of plant and expense accounts should be avoided, whenever possible.

Nevertheless, carriers differ in how much of their operations are devoted to services that produce interstate revenue only or intrastate revenue only. Because these inter-company differences are likely to persist, it may not be possible to avoid all categorization and all usage studies.

---

[12] 2005 Glide Path at 5.

[13] A multi-year phase-in period might be used to reduce the rate impacts of shifting to fixed factors. When the 75-25 factor was adopted in the 1980's it was phased in over several years.

4. Exclude Costs Associated With Non-Regulated Services

The Commission has made numerous decisions that declare particular services to be non-regulated non-telecommunications services. Notably, the Commission held in 2005 that wireline broadband Internet access service provided over a provider's own facilities is an information service, not a telecommunications service.[14] Carriers were also given a choice of whether to treat their broadband transmission services as Title II telecommunications services or information services.[15]

Nevertheless, the Commission did not require that the investment associated with these information services be excluded from the costs of regulated services.[16] It recognized that if it "preemptively deregulated" these services, the associated investment and expense would, under existing Part 64 rules, necessarily be excluded from amounts subject to separations. To avoid this result the Commission created a new category.[17] Wireline broadband service is now an information service whose facilities are included in rate base. However, under Part 64 rules, states may remove those costs if they wish, even though they have been identified as regulated for federal purposes.[18] In sum, wireline broadband is "semi-deregulated."

Under this Order, the FCC and the individual states may now take quite different approaches to wireline broadband facilities and expenses. They may reach quite different decisions about whether it is regulated, about what portions of common facilities and expenses

---

[14] *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, ¶ 12, FCC 05-150 (Sept. 23, 2005).

[15] *Id.* ¶ 138.

[16] The FCC held that to require ILECs to classify their non-common carrier, broadband Internet access transmission activities as nonregulated activities under part 64 rules would impose significant burdens that outweighed the potential benefits. *Id.* ¶ 134.

[17] *Id.* ¶ 130.

[18] *Id.* ¶ 129.

are attributable to it and, not least, how state decisions to exclude nonregulated investment might affect the separations factors and categories developed under Part 36 for regulated plant and expense.

The Joint Board and the Commission should seek a uniform method to adapt the separations process to the increased importance of new services like wireline broadband. New rules are clearly needed. States should not be preempted from regulating these services as they see fit, but a national standard method is needed to account for the costs of these services and to decide how the costs of these services will be defined and separated. Unless the Joint Board and Commission solve this problem, carriers face a risk of recovering more or less than 100 percent of their total investment. Decades ago, it was precisely this kind of risk that led to creation of a Joint Board on Separations.

III. THE FREEZE

In 2001, the Commission froze separations factors based on factors used in calendar 2000. In addition, "categories" were frozen for price cap carriers, also based upon calendar 2000 categories. In May of this year, the Commission extended both freezes for an additional three years, or until comprehensive separations reform can be completed, whichever occurs first.[19]

A. The Factor Freeze and Jurisdictional Rulings

The factor freeze has frozen separations factors based upon usage. Although those usage factors would probably produce a different result based on today's usage patterns, for two reasons the freeze has probably not caused any significant harm to consumers.

[19] This decision was reached in the same docket to which these comments respond.

First, interstate toll traffic has declined during the freeze. Therefore, to the extent that usage has not been updated, costs have remained in the interstate jurisdiction, and the error has probably not harmed local exchange ratepayers.

Second, although companies are still using factors calculated in 2000, the majority of investment and expense is actually separated by the 75%-25% fixed factor, which has itself essentially been frozen since it was announced in 1984.[20] The end of the factor freeze would leave this most important factor unchanged, and therefore the overall separations factors for most companies would not be greatly affected by updating usage-based factors.

On the other hand, the FCC has made jurisdictional rulings during the freeze that are highly relevant to the factor freeze and that require it not be extended beyond 2009.

- As noted in the 2005 Glide Path paper, the Commission has found that switched traffic terminating at an ISP, and VoIP traffic terminating on the switched network are both interstate, even though they may appear to be intrastate local traffic.[21] As a result, the interstate jurisdiction newly extends to a substantial proportion of apparently local traffic. This jurisdictional change suggests that both the fixed 75-25 factor adopted in 1984, as well as usage-based factors derived from 2000 traffic patterns, may be inadequate to describe the jurisdictional usage of the modern network.
- Many carriers now offer retail DSL services through affiliates. The Commission has decided that, at the carrier's option, the wholesale transaction can now generate interstate revenue or nonregulated revenue.[22] DSL technology, however, relies heavily upon the existence of joint use copper

---

[20] *See Jurisdictional Separations Procedures, Amendment of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, 49 Fed. Reg. 7934 (Mar. 2, 1984). The 75-25 factor was phased in and was not fully implemented until 1993. *See* 47 C.F.R. § 36.154(c), (d)).

[21] 2005 Glide Path Paper at 6.

[22] *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, FCC 05-150 (Sept. 23, 2005).

loops, and existing separations rules still use the pre-DSL factor. Seventy-five percent (75%) of the cost of loops is assigned to the state jurisdiction, even when DSL is the service that generates most (or in some cases all) of the revenues on that loop. At best, therefore, existing rules do not require DSL to make any contribution to joint loop costs. At worst: DSL may be the cause in fact of substantial incremental loop costs to upgrade existing plant, while the majority of those costs get assigned to intrastate; and switched service revenue can disappear if the carrier provides only DSL on the loop. Under these circumstances it is not reasonable to assign 75% of loop costs to the state jurisdiction.

- Even larger cost-revenue mismatches may be occurring with the newer fiber systems, particularly where fiber is being installed and directly connected to the end user. Those new systems require total replacement of the existing distribution network and the installation of new and very expensive Network Interface Devices for every customer. Under the existing separations rules, although incremental revenues from these networks are interstate or nonregulated, the great majority of the incremental costs are separated to the intrastate jurisdiction.

These jurisdictional rulings and technology changes require an end to the factor freeze.

The FCC and Joint Board should seriously consider taking the following actions:

1. Adjust the 75-25 fixed factor applicable to all loops so as to increase the interstate share;
2. Adjust usage-based separations factors to adjust for ISP traffic and VoIP; and.
3. Adopt a new fixed factor for DSL and fiber loops or develop a new separation method for DSL services, fiber services and other services that generate only interstate or preemptively nonregulated revenues.

B. The Category Freeze and Special Access

The FNPRM asks for comment on the effects that separations reform would have on evaluation of special access rates.[23]

During the freeze, categories have been frozen for price cap carriers. However, when the original freeze was adopted in 2001, both the Commission and the Joint Board recognized that interstate special access sales were increasing rapidly and that this required continuing scrutiny. Unfortunately, the Joint Board and the Commission have failed to take any meaningful action on this problem during the five years of the freeze, and the existing problems were exacerbated by a post-freeze decision from an FCC staffer. Now the problem has become so serious that the category freeze cannot be further extended.

As originally envisioned in 2000 and 2001, carriers would continue to directly assign special access circuits every year.[24] If this had been accomplished as planned, increasing sales of interstate special access lines would not be a problem today. Interstate revenues and costs would both be higher. While the match might not be precise, it would arguably be consistent with the level of precision historically achieved by separations.

However in 2004, an FCC Staff member issued a letter that Idaho believes directly contradicted the FCC's rules as well as the intent of the Joint Board that recommended the freeze. The letter stated that carriers were not permitted to make any adjustment to any frozen categories until the freeze expires.[25] As a result, carriers are still categorizing their loop and

---

[23] FNPRM ¶ 36.

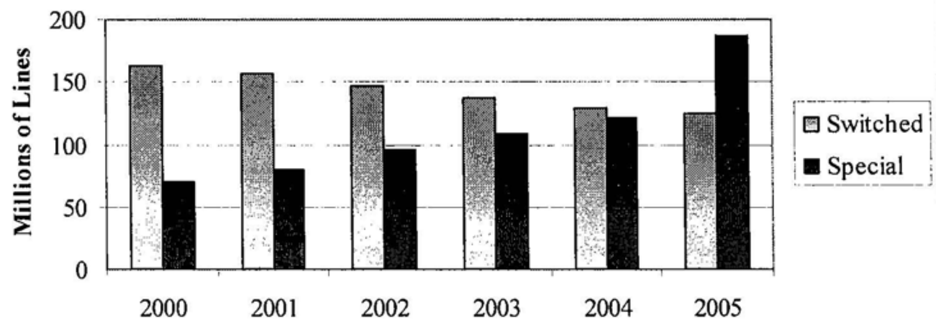
[24] *See, e.g.* 36 C.F.R. § 36.154(g) ("Direct assignment of subcategory Categories 1.1 and 1.2 Exchange Line C&WF to the jurisdictions shall be updated annually as specified in § 36.154(b)").

[25] Letter from Fatina Franklin, Ass't Division Chief, Industry Analysis and Technology Division, Wireline Competition Bureau to Ann Berkowitz, Verizon Communications, June 9, 2004.

switching plant using the investment amounts, and the direct assignment ratios, that were calculated in 2000. For example, if 10% of cable and wire investment was allocated to category 1.2 (interstate private lines) in 2000, only 10% is reported today in that category. Therefore, this FCC Staff letter is preventing carriers from directly assigning new interstate special access investment to the interstate jurisdiction. Because of the interlinked nature of the separations rules, this has a significant effect on the separation of expenses as well.

As shown in Figure 1, special access circuits have grown enormously since 2000. In 2000, large ARMIS ILECs reported 43 special lines for every 100 switched lines. By 2005, the two services had reversed places, and special access held more than a 50% lead.

Figure 1. Separations Trends: Switched and Special Access Lines
(All Large Reporting ILECs)



This expansion of interstate special access lines has produced a parallel increase in interstate special access revenues. According to ARMIS, in 2000 all large companies received 9.5% of their total operating revenues (subject to separations) in the form of special access revenue. By 2005, that had increased to 17.4%. The revenue share nearly doubled in five years.

By contrast, the category freeze (and the FCC Staff letter) blocked any parallel shift in costs. In 2000 the large ARMIS companies separated 7.3% of their total operating expense (subject to separations) to special access expense. By 2005, that figure had increased only slightly to 8.5%.

Profits increase when revenues increase faster than costs. ARMIS confirms this effect for large ILECs. By 2005 the interstate special access operations of large ILECs earned an average net return on investment of 91%. Several companies earned more than 200%, and the highest single case was 309%.[26]

A very high interstate return is not in itself an immediate concern to state regulators. However, when that high return is derived from a revenue mismatch there is a legitimate basis for concern. A separations error that erroneously raises interstate earnings will also erroneously lower intrastate earnings, and this can provide a basis for a request to increase intrastate rates. Moreover, an error of this type could produce an implicit subsidy of interstate special access services by intrastate subscriber charges or switched access rates. This could also lead to violation of either sentence of section 254(k) because special access services are both more competitive than switched access, and not part of the services supported by universal service.

In sum, separations outputs for special access are seriously out of balance, and the problem is now large enough to have a significant impact on total costs. Barring unforeseen events, the Commission should abandon the category freeze in 2009 when the current freeze expires. The FCC and the Joint Board should consider taking one of the following actions:

1. Requiring a single re-categorization study in 2009 when the freeze expires, at least for special access lines; or

[26] This number is reported directly by ARMIS Report 43-01 for Puerto Rico Central Telephone Company. Other cases were calculated from ARMIS revenue, expense and tax data.

2. Developing a new separation method for special access and other services that generate only interstate or preemptively nonregulated revenues.

IV. NEW SEPARATIONS MANUAL

For several reasons, the Commission should undertake now to rewrite the Part 36 separations manual. First, the industry seems unwilling to comply with the existing separations manual. The comments by USTA and other carriers earlier this year show that compliance with Part 36 is extremely costly. The LEC industry will be highly likely to resist any effort to mandate compliance with existing rules when the freeze expires in 2009.

As noted above, carriers need to be offered an exit ramp from separations. This in itself requires a rule change. For carriers that remain subject to separations, it is probably not possible to devise a cost-free system, but the existing Part 36 rules are clearly obsolete, and they may do more harm than good in their present state.

The most fundamental problem for a new separations manual is to develop sensible rules for digital and Internet services. The preceding sections commented that it would be useful to develop new rules for wireline broadband, DSL, fiber service and special access. While the regulatory details vary, in each case the problem is similar.

- States neither set rates nor receive revenues. The Commission has exercised varying degrees of authority over the services, but in each case the states are constrained (except as to the relatively minor category of intrastate special access) from regulating the rates for these services, and ILECs record the revenues as interstate.
- The services use facilities common to the switched network. In most or all cases, some facilities are used in common. Most frequently this is the local loop, but some services also use central office equipment.

- The services make little or no contribution to common costs. With DSL, for example, specialized equipment ("DSLAMs") may be directly assigned to interstate, but the fact that DSL is sold over a switched loop does not reduce the costs assigned to that loop, and no part of the DSL revenues are used to cover switched service costs.
- When the services generate incremental costs, the majority of those costs are assigned to the state jurisdiction. These new digital services generally require some incremental investment to existing common plant.[27] The existing separations rules[28] then assign the majority of those incremental costs to the state.

The FCC and the Joint Board should develop a new method to categorize plant and expenses. It should be simpler than the existing rules, but it should also adapt well to local circumstances, to changing patterns of carrier investment and to new jurisdictional rulings. Where the commission has eliminated the ability of the states to set rates for a service, or where the revenue from a service is allocated to interstate, the system should remove the investment, expense and revenue for that service from the state jurisdiction, either universally by FCC rule or on a case-by-case basis following a state election. One possible method to remove these costs would be to categorize by measuring the ILEC's peak network capacity. This technique should more closely approximate cost causation over time, particularly as networks evolve to digital services.

The new system may appropriately rely more on fixed factors than on usage-based factors, but it will need other elements as well. Carriers vary greatly in how broadly they have

---

27 Again using DSL as an example, providing DSL may require loop upgrades that create incremental investment and incremental expense. Those costs generally are not directly assigned, but are picked up through normal switched service recovery mechanisms.

28 The fixed 75-25 separations factor for loop plant probably assigns most of such costs, but the frozen usage-based factors may also contribute, and often assign even a higher percentage of costs to the state.

deployed the new digital services, and basic fairness will require collecting at least some forms of company-specific data. It may also still be useful to continue to measure interstate toll calling rates because usage in some parts of the country, usually border areas, continue to rely heavily upon interstate switched calling.

It may also be useful to examine the potential of "expense transfers." The Commission first established the High Cost Loop program in 1984 to reduce the impacts of other separations changes on local exchange rates. However, rather than requiring that the universal service revenue be assigned directly to the state jurisdiction, it instead established an "expense transfer." Under this rule, a company transfers expenses from the interstate to the state jurisdiction in an amount equal to its USF revenue. The effect is still to reduce local rates, because the expense transfer lowers intrastate costs. A new expense transfer mechanism may be useful in defining the contribution that digital services should make to the costs of jointly used plant.[29]

A rewrite of Part 36 should also address problems with the current treatment of unbundled network elements ("UNEs"). Carriers' treatment of UNE revenues is apparently inconsistent. If so, at least some carriers are creating cost-revenue mismatches for UNEs. Solving this problem may be less difficult than the digital service problem, but it will still require either a rule change or, at minimum, an accounting clarification letter from the FCC.

With the extended freeze set to expire in 2009, this is a perfect time for the Commission, and the Joint Board, to undertake a long-range project to update separations for the digital communications age. A new system should impose fewer costs on carriers, yet still

[29] For example, the FCC might mandate an expense transfer equal to 50% of DSL revenue.

achieve the legal goals set out in 1930 by the Supreme Court in *Smith v. Illinois Telephone* and by more modern statutory creations such as 47 U.S.C. § 254(k).

Submitted this 22th day of August 2006.

FOR THE IDAHO PUBLIC UTILITIES COMMISSION

Donald L. Howell

Donald L. Howell, II
Deputy Attorney General

PO Box 83720
Boise, ID 83720-0074
(208) 334-0312
E-mail: don.howell@puc.idaho.gov