



**NOTICE OF WRITTEN EX PARTE
PRESENTATION (47 C.F.R. § 1.1204(10))**

August 16, 2007

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
Room TW-B204
445 12th Street, SW
Room TW B204
Washington, DC 20554

Re: Ex Parte Presentations in the proceeding captioned:

In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board, CC Docket No. 80-286, Order and Further Notice of Proposed Rulemaking, FCC 06-70 (rel. May 16, 2006) (FNPRM).

In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services ET Docket No. 04-295

Dear Madam Secretary:

At 9:30 a.m. on July 17, 2007, during the National Association of Regulatory Utility Commissioner's recent meetings at the Marriott Marquis in New York City, several members of the Federal-State Joint Board on Separations gathered in the Odets Room to hear from several groups on comprehensive reform. Joint Board Commissioners Paul Kjellander (ID), Mark Johnson (AK), Curt Stamp (IA), and John Burke (VT) attended the meeting joined by Board staffers Joe Cusick (ID), Joel Shifman (ME), Lori Kenyon (AK), Peter Bluhm (VT), and Brad Ramsay (NARUC). Various industry sectors were represented by Linda Vandeloop (AT&T), Robert Mayer (USTA), Jeffrey Lanning (Embarq) Cheryl Parrino (Small independently owned companies and cooperatives), Tom Moynihan (Verizon) and Paul Cooper (Fred Williamson Associates, representing OPASTCO).

NARUC agreed to file any required ex partes on behalf of attendees. Unfortunately during the aftermath of the meeting, I failed to locate the notes related to this meeting collected from others until yesterday. *I respectfully request any waivers needed to file this notice out-of-time.*

SUMMARY OF ORAL PRESENTATIONS

According to Mr. Robert Mayer presenting for the United States Telecom Association:

- *USTA represents both price cap and rate-of-return carriers.*
- *The FCC separations actions to date have reflected larger changes in the networks and traffic. Public interest is not served by reliance on obsolete structural underpinnings.*
- *Policy should not be arbitrary, anachronistic or asymmetrical.*
- *For price cap companies, there should be an “exit door” that avoids the cost of “conducting extensive, detailed separations studies and reporting separations data.”*
- *For Rate-of-return companies, don’t overhaul Part 36 before determining what effect it would have on technology deployment, network investment and broader reforms.*
- *Burdensome data requests should be avoided.*

According to Mr. Jeff Lanning, presenting for Embarq (formerly Sprint’s local exchange operations):

- *Embarq is subject to rate-of-return in only four states and is entirely price cap on the federal level.*
- *Separations is a tool, not an end in itself. The purpose is to get the rates right and establish jurisdiction.*
- *Rate regulation is going away, and there’s no reason to perfect separations now while it’s on its way out.*
- *Moreover, if there is concern about allocating costs to DSL, that seems to argue for an undesirable policy outcome of increasing broadband prices and decreasing POTS prices.*
- *Regarding jurisdictional stability, leave things where they are.*
- *There is a broad social benefit in broadband development. Trying to get prices exactly right in terms of individual services may be shortsighted in terms of promoting broadband.*
- *Embarq anticipates facing competition within 10 years in all or nearly all areas, and facing substantial USF challenges in many places without competition.*
- *Embarq supports USTA’s general views: Keep the freeze going.*

According to Ms. Cheryl Parrino, representing small independently owned companies and cooperatives:

- *Maintaining the freeze is a good thing until a number of policy issues are sorted out.*
- *Exit ramp depends on nature of the company and the information the FCC and state commissions need to do their jobs regarding rate regulation and universal service.*
- *Until intercarrier comp. and universal service issues are sorted out, the FCC shouldn’t change separations.*
- *Separations has always been designed to achieve policy objectives and it is comprehensively linked to USOA and other systems. There is logic to addressing these issues in a systematic way.*
- *It is good there is an overlap between universal service and separations joint boards. Structural issues are a potential barrier, but don’t make it impossible. The Separations Joint Board should coordinate with the Universal Service Joint Board. Policy goals should be set by universal service and intercarrier compensation, and then separations should follow.*
- *The Board shouldn’t send out data request until it knows what the policy objectives are.*
- *State needs for separations data vary considerably, particularly in states that operate their own universal service funds.*
- *While there are jurisdictional anomalies now, it’s not worth collecting data at this point, and there is no way to collect data in a collegial way that doesn’t create significant costs.*

According to Tom Moynihan, representing Verizon:

- *The need for separations is fading away.*
- *To the extent companies do not rely on separated costs, they should be allowed to get “out from under” separations. The FCC should allow per-carrier petitions.*
- *In states that still rely on costs, the freeze is doing rough justice and should continue. But even there, the need and time for rate regulation regimes are fading away.*

According to Paul Cooper, representing rural rate-of-return carriers and OPASTCO:

- *Rural rate-of-return carriers still need a process to assign costs, jurisdictionally.*
- *Costs are not disconnected to pricing for these carriers. There is a direct link, and this differs from price cap carriers. Objective is to roughly match costs to jurisdiction.*
- *Separations is a functional cost accounting process that can accommodate new technologies. Rural carriers don't want an exit ramp, because they won't give up confiscation claims.*
- *Process is backwards now: recovery first, then separations.*
- *Separations should defer major change until the end of intercarrier comp reform and universal service reform. Any separations change will have effects on access rates and universal service.*
- *There is a reasonable match of cost and revenues now. Dial-up costs and revenues are both in state jurisdiction. Broadband costs and revenues are not. UNEs costs and revenues are matched in state jurisdiction for most companies.*
- *The time for a data request is not now, but might be after universal service and intercarrier compensation proceedings are finished.*
- *If there must be a data request, Joint Board should work with association representatives on details.*
- *Direct assignment should be discussed with federal regulators.*
- *At one time RAO letters came out through joint board. There should not be unilateral jurisdictions made by FCC in areas that are not clear. Suggest there should be a joint process.*
- *Part 64 works fairly well now, and does not need to be revised. Some states require very detailed CAMs. NECA also looks at CAMs. This function can occur within states, and does not require joint board actions.*
- *Some companies may not be able to measure traffic any longer.*

According to Linda Vandeloop, representing AT&T:

- *Her comments focused only on separations reform for price-cap companies.*
- *Separated prices are not used to set prices for these companies. Separating these costs is an unnecessary exercise.*
- *Regulatory fees and USF contributions are still based on intrastate revenues, but that can continue without cost separations.*
- *Exit ramp proposal is desirable. However, AT&T is concerned about some proposed conditions. Some states proposed waiving exogenous low-end adjustment and waiving confiscation claims. Not all those conditions are necessary.*
- *AT&T does not currently have a right to a low-end adjustment now, and gave that up with it got pricing flexibility. As to confiscation, burden of proof is on the carrier, and it's unnecessary to waive the right.*
- *Not realistic to wait for end of universal service reviews since separated costs are not a factor.*

- *States should have a right to comment on lifting of separations requirements.*
- *There are minimal instances where separations data are required, and these could be satisfied with current separations data.*

If you have any questions or comments about this ex parte, please do not hesitate to contact any of the undersigned at 202.898.2207 or via e-mail at jramsay@naruc.org.

Sincerely,

**James Bradford Ramsay
NARUC General Counsel**