

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

Federal-State Joint Board on  
Separations Seeks Comment on  
Proposal for Interim Adjustments to  
Jurisdictional Separations Allocation  
Factors and Category Relationships  
Pending Comprehensive Reform and  
Seeks Comment on Comprehensive  
Reform

CC Docket No. 80-286

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION  
AND THE PEOPLE OF THE STATE OF CALIFORNIA**

FRANK R. LINDH  
HELEN M. MICKIEWICZ  
GRETCHEN T. DUMAS  
505 Van Ness Avenue  
San Francisco, CA 94102  
Phone: (415) 703-1210  
Fax: (415) 703-4432

Attorneys for the California  
Public Utilities Commission and the  
People of the State of California

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The California Public Utilities Commission and the People of the State of California (CPUC or California) submit these comments in response to the Federal-State Joint Board on Separations (Joint Board) request for comment<sup>1</sup> on the proposals of the State Members of the Joint Board for interim adjustments to jurisdictional separations allocation factors and category relationships.<sup>2</sup> California supports the proposals with the understanding that they are interim only, and will be put in place prior to any continuation of the current freeze, which has been in effect since July 2001.<sup>3</sup>

## **I. DISCUSSION**

The FCC has proposed extending for another year the freeze on jurisdictional separations category relationships and cost allocation factors.<sup>4</sup> The State Members of the Joint Board propose that two interim-only adjustments be adopted prior to any continuation of the freeze.

### **A. Special Access Cost Assignment**

The first proposed interim reform would more fairly allocate costs of special access service from the intrastate jurisdiction to the interstate jurisdiction. Under the freeze, carriers have frozen the relationships among their categories and subcategories of

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<sup>1</sup> Public Notice, *Federal-State Joint Board on Separations Seeks Comment on Proposal for Interim Adjustments to Jurisdictional Separations Allocation Factors and Category Relationships Pending Comprehensive Reform and Seeks Comment on Comprehensive Reform*, CC Docket No. 80-286, rel. March 30, 2010, p. 2.

<sup>2</sup> Letter from Steve Kolbeck, State Chairman, Federal-State Joint Board on Jurisdictional Separations, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 80-286 (Mar. 5, 2010) (Proposal).

<sup>3</sup> *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket 80-286, Report and Order, 16 FCC Rcd 11382.

<sup>4</sup> Notice of Proposed Rulemaking, *In the Matter of Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Rel. March 29, 2010.

investment. As a result, carriers have ceased applying direct assignment rules to special access facilities.

State Members believe that the freeze and the FCC staff directive to ignore direct assignment rules have led to a mis-assignment of special access costs. This mis-assignment has been created because during the nine years of the freeze, the telecommunications industry has changed dramatically.

The problem that the interim reform addresses is that over the last nine years carriers have seen an increase in the sale of interstate special access services without there being a commensurate growth in interstate assignment of costs. Instead, the special access costs under the freeze have been allocated primarily to state jurisdiction at the same relative level as before the freeze. Due to the freeze, the current allocation of costs between the state and interstate jurisdictions is governed by separations studies that are at least nine years old or older. Based on their age alone and the dramatic changes in the use of special access lines, these studies do not reflect current conditions.

Thus, State Members propose an interim-only adjustment based on the assumption that allocation based on revenues provides a reasonable surrogate to directly assigning costs. State Members believe this proposal better matches plant usage to costs than the current 2001 freeze allows. “[The proposal’s]...simplicity allows this proposal to be implemented prior to July 2010, an important factor in light of the FCC’s intent to limit the most recent freeze extension to one year.”<sup>5</sup>

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<sup>5</sup> Proposal, p. 8.

## **B. Advanced Services Cost Assignment**

The second proposed reform would allocate more of the costs of advanced services from the intrastate side to the interstate side. The State Members propose to create new subcategories and allocators for assignment of costs and revenues associated with network cable and wire facility loops. Unlike the current rules, this proposal does not assume that a local loop is used primarily for voice telecommunications or that DSL and video usage is insignificant. The new assignments are intended to align the jurisdiction over loop investment more closely with the jurisdiction over the principal services provided on the loop by which network revenues are generated.

The State Members propose to categorize loops according to the services provided over them, and then to apply distinct fixed separations factors to each category. In this way, if a loop is actually used to deliver advanced services, its subcategory would reflect that. The result is that more costs would be assigned to the interstate jurisdiction or to non-regulated costs, an assignment that is consistent with the FCC's assertion of jurisdiction over those services. The proposal also standardizes the allocation of costs associated with loops used to provide unbundled network elements. The State Members also propose a method for allocating revenues from multi-jurisdictional bundled services. In sum, "[t]he new assignments are intended to align the jurisdiction of loop investment more closely with the jurisdiction of the principal services provided over the loop and in which the associated revenues are generated."<sup>6</sup>

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<sup>6</sup> Proposal, p. 11.

The State Members' recommendations are intended as interim steps before the current freeze is extended. In the absence of comprehensive reform, these proposals for interim action will reduce the most striking cost assignment imbalances developed over the last decade. As the State Members point out,

[t]he current separations allocation factors and categorizations no longer have any basis in fact. While some inaccuracy of the separations process is permissible, currently the actual use to which the property is put is almost completely ignored.... Under these circumstances, it is unreasonable to continue the freeze past July 1, 2010, without key adjustments to ensure [that] existing allocation factors better reflect actual use of property. Once these changes are made, the freeze could be reimposed and continued while further reform options are considered.<sup>7</sup>

As was noted above, the current allocation of costs between the state and interstate jurisdictions is governed by out-of-date separations studies. As State Members recognized in their filing with the FCC:

...any age-related inaccuracies are amplified by advances in technology and several key FCC jurisdictional determinations during the last nine years. The increased use of packet-based networks; the increased sale of DSL and other broadband services; the extraordinary increase of bandwidth use caused by the uploading, transmission, and downloading of digital photos and video files; the FCC's decision to alter the jurisdictional nature of various services; and a wide variety of other factors unquestionably requires the adjustment of the current process. The planned expansion in broadband services under newly created stimulus programs will further widen the gap between separations procedures and network realities.<sup>8</sup>

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<sup>7</sup> *Id.*, p. 3.

<sup>8</sup> *Id.*, p. 2.

### **C. California's Perspective**

California is supportive of these proposals and recommends that the FCC adopt them before reinstating the separation freeze for yet another year. From the CPUC's vantage point, the proposed interim steps address two of the most glaring examples of unfairness that have resulted from the FCC's failure to implement comprehensive separations reform and instead froze the separation allocations for the last nine years. The CPUC finds the proposed steps reasonable on an interim basis and as a necessary step toward rationalizing the current separation process until full-scale reform can be implemented. As the State Members emphasize, they are not offering "long term separations reforms," only interim steps "to reduce the most glaring imbalances in cost assignment that have arisen during the nine years of the separations freeze."<sup>9</sup> The proposed interim allocations are more rationale than the current rules, but they are not suitable long-term solutions to comprehensive Separations reform.

## **II. CONCLUSION**

The interim adjustments cover the direct assignment of special access investment and the treatment of advanced services over local loops. In the absence of permanent reform, these interim adjustments will better align costs with revenues and will better reflect how the networks are used in a burgeoning broadband era. However, California's support for these interim reforms is not to be read to as a statement implying that the CPUC has no jurisdiction over such advanced services. Finally, the CPUC strongly urges the Joint Board to issue a recommendation for permanent reform by the end of the year

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<sup>9</sup> *Id.*, p. 5.

which would enable the FCC to finally adopt a permanent fix to the current but very much outdated separations scheme.

Respectfully submitted,

FRANK R. LINDH  
HELEN M. MICKIEWICZ  
GRETCHEN T. DUMAS

By: /s/ GRETCHEN T. DUMAS

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Gretchen T. Dumas

505 Van Ness Avenue  
San Francisco, CA 94102  
Phone: (415) 703-1210  
Fax: (415) 703-4432  
E-mail: [gtd@cpuc.ca.gov](mailto:gtd@cpuc.ca.gov)

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