

State of California

Public Utilities Commission
San Francisco

MEMORANDUM

Date : November 2, 2006
(The Meeting of November 9, 2006)

To : Commissioners
Telecommunications Advisors

From : Natalie Wales, Legal Division
Norman Low, Telecommunications Division
Charles Christiansen, Telecommunications Division

Subject : FCC Request for Comment on Separations Reform Proposals

Pending the FCC's examination of reform to the jurisdictional separations process (the process by which ILECs apportion regulated costs between the intrastate and interstate jurisdictions), the FCC adopted in 2001 an interim freeze on the allocation factors for separations.¹ In a recent *Order and Further Notice of Proposed Rulemaking (FNPRM)*, the FCC extended the freeze and sought further comment on separations reform proposals.² Opening Comments were filed on August 22, 2006, and Reply Comments are due on November 20, 2006. By this memo, staff seeks permission to file reply comments with the FCC.

I. Background

As the third step in a four-step regulatory process historically established to set rates for ILECs' intrastate and interstate services, jurisdictional separations prevents ILECs from recovering the same costs in both the state and federal jurisdictions.³ In 1997, the FCC

¹ *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No 80-286, *Report and Order*, 16 FCC Rcd 11382 (2001) (2001 Separations Freeze Order).

² *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).

³ First, carriers record their costs in accordance with the Uniform System of Accounts (USOA) (Part 32 of the Commission's rules); second, carriers assign costs between regulated and unregulated activities (Part 64); third, carriers perform jurisdictional separations by apportioning regulated costs between the interstate and intrastate jurisdictions (Part 36), and; fourth, carriers apportion interstate regulated costs among the services and rate elements that form the basis for their interstate access tariffs (Part 69). *See, e.g., FNPRM* at para. 3.

recognized that the separations rules developed in a monopoly environment may require reform to account for technological and market changes in the industry. In 2001, to afford stability and regulatory certainty during the FCC's consideration of reform proposals, the FCC imposed an interim freeze for up to 5 years of all "Part 36 category relationships" and allocation factors for price cap carriers, and all allocation factors for rate-of-return carriers, obviating the need for carriers to perform separations studies.⁴

The FCC's May 15, 2006 *FNPRM* extends that freeze for an additional three years (until approximately June 15, 2009) and seeks comment on (1) the separations reform proposals in the record;⁵ (2) the issuance of a data request to carriers (a draft of which is attached to the *FNPRM*);⁶ (3) how to separate costs associated with new technologies, and; (4) the interaction between separations reform and other issues/proceedings such as local competition, universal service, and special access.

II. Proposed Comments

In light of the major ongoing changes in the telecommunications industry, CPUC staff supports the FCC's decision to extend the separations freeze to allow more time to study comprehensive reform. Separations reform directly affects the small rate-of-return carriers in California and has the potential to affect funding of California's Universal Service programs. Furthermore, depending on the nature of the reforms, some interaction may occur between changes to separations and changes in the areas of federal universal service and intercarrier compensation. Staff would therefore propose filing comments highlighting the need to consider these possible interactions in adopting any comprehensive separations reform.

CPUC staff also believe that the information sought in the draft data request will provide useful data to consider separations reform, as well as to monitor the deployment of broadband infrastructure and the offering of advanced communications services in California to help the Commission develop policies and procedures to facilitate the rapid deployment of broadband facilities, the offering of advanced services, and the

⁴ The frozen category relationships and allocation factors are based on data from carriers' calendar-year 2000 separations studies. *FNPRM* at note 25 (citing *2001 Separations Freeze Order*, 16 FCC Rcd at 11387-88, para. 9).

⁵ The State Members of the Federal-State Joint Board on Separations (State Members), filed two papers (the *Glide Path Paper* and the *Glide Path II Paper*) discussing specific reform options and the transition process between current and new separations systems. See *FNPRM* at paras. 11-13.

⁶ The State Members also proposed issuance of a data request "find out what the carriers are doing under the freeze...and to determine what is, and is not, working." *FNPRM* at para. 31 (citing the State Members' Letter to the FCC Commissioners, dated May 27, 2004, at 2). The draft data request is attached as Appendix C to the *FNPRM*.

development other new technologies.⁷ Consequently, staff would also propose to file comments urging the FCC to send out the draft data request.

Assigned staff: Legal Division - Natalie Wales; Telecommunications Division - Norman Low and Charles Christiansen.

⁷ The FCC is contemplating a one-time data collection and states that it “continue[s] to believe that the information derived from such a data request will be useful in assisting the [FCC] as it contemplates comprehensive separations reform.” *FNPRM* at para. 31.