

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

DA 99-414

In the Matter of:

Jurisdictional Separations Reform  
and Referral to the Federal-State  
Joint Board

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CC Docket No. 80-286

Reply Comments of

THE STAFF OF THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

April 14, 1999

## **I. INTRODUCTION AND SUMMARY**

The Washington Utilities and Transportation Commission Staff (Washington UTC Staff) submits the following reply comments in response to the Federal Communications Commission's (FCC) February 26, 1999, Public Notice inviting comment on the State Members= Report on Comprehensive Review of Separations (Dec. 21, 1998). Although we did not file initial comments regarding this notice we have participated in the Notice of Proposed Rulemaking (NPRM) phase and intend to continue participation as this proceeding moves forward. We appreciate this opportunity to provide feedback on these important issues as the Joint Board moves closer toward resolution of Jurisdictional Separations Reform. While we agree with the State Members in many respects, we disagree that interim transitional reform of separations is necessary.

## **II. REPLY COMMENTS**

### General Overview

The Washington UTC Staff agrees with the State Members that the comprehensive review of separations encompasses a broad range of issues. The Washington UTC Staff agrees with the State Members that we should continue down a constructive path toward reform in an expedited fashion. The State Members= Report provides necessary and useful clarification of the issues at stake, and raises important

questions regarding the proper scope of this review.

### Relevance of Separations

The Washington UTC Staff also agrees with the State Members that some form of separations is still required. We disagree, however, with the State Members that any interim transitional reform is necessary at this time. Rather, the Washington UTC Staff agrees with the comments of AT&T in opposing the adoption of any transition plan unless and until the separations process is, in fact, modified. The current separations process is workable today, although its results are not optimal. However, the separations process does not have to be perfect. Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, Notice of Proposed Rulemaking, CC Docket 80-286, 12 F.C.C.R. 22120, & 33 (1997) (quoting Smith v. Illinois Bell Tel. Co., 282 U. S. 133, 150 (1930) (Aextreme nicety is not required≡ in such allocations)). The State Members note the importance of Acontinuity of process≡ and maintenance of Aessential data,≡ State Members= Report, at 16, which the Washington UTC Staff believes are more crucial than nicety, because the three-year rolling average would not necessarily improve accuracy. The concerns about internet usage are not empty, but they should provide an incentive to all of the parties to participate and complete this reform in a timely manner.

The Telephone Associations<sup>1</sup> also disagree that interim transitional reform is necessary at this time:

The State Members' proposal also conflicts with the Commission's goal of simplifying separations procedures. (footnote omitted) If adopted, this proposal will require carriers to implement additional procedures to determine jurisdictional allocations, procedures that represent unnecessary administrative burdens for mostly small and rural ILECs who are primarily subject to separations rules.

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<sup>1</sup>Consisting of NECA, NRTA, NCTA, and OPASTCO.

Telephone Associations Comments, at 6 (footnote omitted). Although this is not the only reason to avoid the three-year rolling average freeze proposal, it is a significant consideration when weighing the benefit of the proposal against its respective cost. The Washington UTC Staff believes that continuing the status quo until the separations process is in fact modified is the best course of action because it will be the least disruptive approach and will provide the most incentive to correct the current system. The Regulatory Fairness Act<sup>2</sup> should not be taken lightly, especially when the concerns of small businesses are at stake and "unnecessary administrative burdens" must be weighed against any relative benefit. Because the end result of reform cannot be predicted at this time, the Washington UTC Staff advocates continuing the status quo until the necessary decisions are made.

The Washington UTC Staff believes that the additional costs and disruption of an alternate calculation based on a three-year rolling average is not worth any perceived benefit. Rather, the reasons necessitating consideration of such a mechanism will continue to provide an incentive for all the parties to work together toward consensus and resolution of the underlying issues. To this end, the Washington UTC Staff is committed to working with the Joint Board, the Commission (FCC), the companies, and all other parties involved in comprehensive reform on a

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<sup>2</sup>The Small Business Regulatory Fairness Act of 1996, Pub. L. No. 104-121, § 201, 110 Stat, 847 (1996), codified at 5 U.S.C. § 601 *et seq.*

relatively expedited basis. In the meantime, the stability and comparability of the current jurisdictional separations process should be continued so as not to confuse an already cumbersome, complex, and complicated process.

### Accounting Safeguards

Although 47 CFR Part 64 and Part 36 could be better coordinated in a reformed process, the Washington UTC Staff wishes to clarify that both of these processes are merely regulatory tools and that any perceived shortcomings should not prohibit the respective jurisdictions from making the appropriate adjustments when justified, whether reformed or not. The reform of these two mechanisms will enhance the usefulness of these tools, but should not be construed as limitations on proper ratemaking adjustments. Additionally, to the extent rates are reset as a result of this reform process, rates may or may not reflect their underlying costs. Regulatory lag works both ways (underearning and/or overearning on the respective confiscation liabilities).

### Confiscation Liabilities

The Washington UTC Staff agrees that companies subject to its regulation should have the opportunity to earn a fair and reasonable return on their investment if this is what the Commission (FCC) and the State Members are referring to

when discussing the Aconfiscation liability.≡ However, it must be recognized that the companies themselves have rights and responsibilities. The Aliability≡ is not something the States or the Federal government Aowe≡ the companies. Rather, when a company requests a rate increase (an action a company must be proactive in seeking, at least in Washington state) the respective jurisdictions should reasonably allow for it. If a company is not competitive, or gives poor customer service, that risk should not fall on either jurisdiction. Instead, the company is ultimately responsible to take actions, in its own interest, that will ameliorate its concerns. The respective jurisdictions must then take into consideration the respective Aconfiscation liability≡ when arriving at a decision. This will be necessary as long as there are monopolies (or dominant providers with substantial market power) whose rates are regulated by a jurisdiction. As competition makes inroads and consumers begin to have more choices, ratemaking may diminish and companies may bear their risks and rewards without regulatory intervention. But for now, many states and the FCC are charged with regulating telecommunications in the public interest to ensure that rates are fair, just, reasonable, and sufficient. This charge necessitate some form of Jurisdictional Separations. The Washington UTC Staff recommends that the current process be continued until the jurisdictional separations process is, in fact, modified.

### **III. Conclusion**

The Washington UTC Staff appreciates this opportunity to reply to the comments of others and to the State Members= Report, and looks forward to continued participation and progress relating to the reform of Jurisdictional Separations as well as other important issues now pending before the Commission (FCC). In addition, the Washington UTC Staff continues to urge the Joint Board and the FCC, as we did in our comments submitted on December 9, 1997, to adopt consistent yet flexible jurisdictional separations requirements that are administratively simple and low-cost and which provide proper levels of jurisdiction and authority necessary to ensure that effective competition evolves and that captive ratepayers are protected in the mean time.

The Washington UTC Staff looks forward to further participation and further opportunity to comment on these matters before the Joint Board and the FCC.

DATED this 14th day of April, 1999, at Olympia, Washington.

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CAROLE WASHBURN  
Executive Secretary  
Washington Utilities and



Transportation Commission