

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

In the Matter of

MTS and WATS Market
Structure

CC Docket No. 78-72

Amendment of Part 36
of the Commission's Rules and
Establishment of a Joint Board

CC Docket No. 80-286

RECOMMENDED DECISION AND ORDER

Adopted: January 10, 1989; Released: February 7, 1989

By the Federal State Joint Board:

I. INTRODUCTION

A. Summary

1. The Commission instituted this phase of this proceeding in December 1986 to re-examine the separations treatment of special access lines carrying both state and interstate traffic (mixed use lines),¹ and asked this Joint Board to prepare recommendations for resolution of these issues. We recommend that the Commission modify the separations procedures applicable to mixed use special access lines to reflect a greater recognition of state interests in the regulation of such facilities. At present, the cost of special access lines carrying both state and interstate traffic is generally assigned to the interstate jurisdiction. This approach has tended to deprive state regulators of authority over largely intrastate private line systems carrying only small amounts of interstate traffic. Under the present procedures, the addition of even a *de minimis* amount of interstate traffic can result in the reclassification of an intrastate line. We recommend that the Commission adopt new separations procedures for mixed use special access lines that directly assign the cost of such facilities to the state jurisdiction when such lines carry *de minimis* amounts of interstate traffic in addition to intrastate traffic. The interstate traffic would be deemed *de minimis* when it amounts to ten percent or less of the total traffic on the special access line. Mixed use lines carrying a greater proportion of interstate traffic would be directly assigned to the federal jurisdiction. While the record contains proposals for more substantial changes, we believe that these options have serious disadvantages. We believe it is possible to achieve a fair and reasonable division of these costs between the jurisdictions without producing such undesirable results. The carefully tailored measures that we are recommending will address the existing difficulties without the disadvantages inherent in the other options.

B. Background

2. The issues presently before us were initially raised by petitions for reconsideration of the Commission's decision to directly assign the cost of closed end Wide Area Telecommunications Service (WATS) access lines to either the state or interstate jurisdiction.² While the Commission declined to modify its decision concerning the separations treatment of WATS access lines in response to the requests for reconsideration, the Commission found that those petitions raised serious questions concerning the proper separations treatment of special access lines that carry both state and interstate traffic.³ The Commission noted that certain special access lines carry both state and interstate traffic while the existing separations rules assume that special access lines are used exclusively for either state or interstate traffic. Accordingly, the Commission requested that this Joint Board examine the proper separations treatment of mixed use special access lines, and established a pleading cycle for comments concerning these issues.⁴

3. In requesting comments, the Commission emphasized that "the traditional direct assignment of special access lines has resulted in pricing methods that have generally satisfied the needs of carriers and their customers and have promoted economic efficiency in the provision of telecommunications services".⁵ At the same time, the Commission said that alternative approaches should be considered for special access lines on which traffic is jurisdictionally separable and measurable, and asked for comments concerning such alternatives.⁶ The Commission also noted that it "could continue to treat all special access lines carrying mixed traffic the same as jurisdictionally pure special access lines by directly assigning their costs".⁷ In addition, the Commission asked parties advocating alternative separations methods to show that their proposals would satisfy carrier and customer needs.⁸ Comments were filed on February 20, 1987, and replies were filed on March 20, 1987.⁹

4. On reconsideration of its decision in the *Hecht* proceeding,¹⁰ the Commission held that the Commission has jurisdiction over all special access lines carrying any interstate traffic, and that special access lines carrying jurisdictionally mixed traffic must, therefore, be provided under interstate tariffs.¹¹ Thus, under the provisions of the *Hecht* reconsideration decision and current separations practices, the cost of mixed use special access lines would be allocated to the interstate jurisdiction. However, the D.C. Circuit recently ordered this decision vacated as moot when the private parties to that complaint proceeding reached a settlement after appeal of the Commission decision.¹² As a matter of actual practice, it appears that the carriers generally require that customers obtain mixed use special access lines from the interstate tariff, although this practice may not be followed in all cases. Pending completion of this proceeding, the local exchange carriers (LECs) are, in most cases, assigning the cost of mixed use special access lines to the state or interstate jurisdiction on the basis of the tariff from which the customer obtains service in order to avoid cost/revenue mismatches.¹³

II. COMMENTS

A. Overview

5. A majority of the parties advocated retention of the current procedures under which the cost of mixed use special access lines is directly assigned to the interstate jurisdiction based on the "contamination doctrine".¹⁴ Comments also suggested a number of other options. The proposals included several methods for continuing direct assignment of the full cost of each special access line to one jurisdiction or the other as well as several means of allocating or dividing the cost of each mixed use special access line between the jurisdictions.

B. Direct Assignment¹⁵

1. Direct Assignment Based on Contamination¹⁶

6. The American Telephone and Telegraph Co. (AT&T) and MCI Communications Corp. (MCI) argue that the current procedures for direct assignment of special access lines should be continued.¹⁷ AT&T contends that this approach will: (1) minimize customer confusion by avoiding the need to order service from multiple tariffs; (2) allow simplified bill verification; (3) avoid the need for potentially expensive changes in carrier billing systems; and (4) foster efficient use of special access lines.¹⁸ MCI raises similar concerns, arguing that the present approach fosters administrative simplicity, and promotes economically efficient use of the network.¹⁹ MCI also argues that any measures that treat special access lines like common lines will promote bypass.²⁰ In addition, MCI emphasizes the importance of uniform treatment for all special access lines. MCI argues that an allocation based on relative use or a fixed allocation factor will, if applied only to mixed use special access lines on which traffic can be measured, result in unreasonable discrimination between AT&T's WATS service and similar offerings by other interexchange carriers.²¹

7. AT&T opposes the allocation of special access line costs based on relative use even when measurement is possible, and argues that relevant case law does not require this apportionment²² method.²³ It states that a usage-based allocation could lead to cyclical changes in cost allocations and the risk of recurring earnings shortfalls and overages as well as pressure for uneconomic usage sensitive recovery of these costs.²⁴ AT&T also opposes allocation of these costs based on predominant use, arguing that this would produce problems due to the need for customer certification of predominant use, disputes concerning the accuracy of such certifications, and the potential for customer confusion when changed usage patterns result in the application of a different tariff.²⁵

8. The Bell Atlantic Telephone Cos. (Bell Atlantic) and the Mountain States Telephone and Telegraph Co., Northwestern Bell Telephone Co., and Pacific Northwest Bell Telephone Co. (US West) also argue that the existing separations procedures applicable to special access lines should not be changed.²⁶ Bell Atlantic contends that these facilities have always been directly assigned, even though jurisdictionally mixed use lines have existed in the past.²⁷ US West argues that direct assignment is consistent with flat rate pricing of special access services. It states that such pricing is more reflective of cost causation principles than usage based pricing and results in a less complex bill.²⁸ US West also contends that direct assignment based

on the contamination doctrine reduces the incentives for tariff shopping²⁹ and assures federal jurisdiction over interstate services.³⁰ Bell Atlantic emphasizes that the LECs cannot reasonably measure traffic by jurisdiction in the case of many special access lines.³¹ US West also opposes the allocation of mixed use special access line costs based on usage measurements, stating that the LECs are unable to determine the jurisdictional nature of traffic on special access lines other than those used for traditional screened WATS.³² It also opposes cost allocations for mixed use special access lines based on customer reported traffic measurements, arguing that many customers are not capable of such measurement, and that such an approach would create opportunities for tariff shopping.³³ In addition, US West argues that an allocation based approach would require potentially expensive changes in the current LEC billing systems, and generate more complex bills.³⁴ Bell Atlantic states that substantial study would be necessary before revised measures for the separation of mixed use special access lines could be implemented due to the complexity of the issues involved.³⁵ It also suggests that if the Commission believes that separations changes are necessary, the Commission should pursue more fundamental reform such as a re-examination of the message/private line distinction.³⁶

9. Cincinnati Bell Telephone Co. (Cincinnati Bell) and Contel Corp. (Contel) join in supporting continued direct assignment of the cost of all mixed use special access lines.³⁷ The United Telephone System Cos. (United) also contend that, since all mixed use special access lines are subject to interstate rate regulation, the cost of such lines should be directly assigned to the interstate jurisdiction in order to ensure a proper cost/revenue match.³⁸ In support of this approach, United argues that direct assignment has served the public well by fostering desirable pricing methods and promoting economic efficiency.³⁹ Contel opposes a usage based allocation and argues that the measurement of relative state and interstate traffic on mixed use special access lines would be very burdensome, if not impossible, since the LECs cannot normally determine the jurisdictional nature of special access traffic, except in the case of originating traffic that "traverses" a switch.⁴⁰ United also states that an allocation approach would be questionable since it is unable to measure a large portion of special access traffic, adding that actual measurement of all special access traffic would involve substantial expense.⁴¹ In addition, Contel indicates that it does not presently keep the information necessary to measure state and interstate usage on originating WATS access lines even though traffic from such lines "pass[es] through its switches".⁴² Cincinnati Bell contends that no separations process that requires the LECs to perform traffic studies on mixed use lines would be cost effective,⁴³ and argues that separations procedures based on customer certification of relative or predominate use would also be costly and burdensome.⁴⁴ Contel also states that, even if there were no traffic measurement problems, the increased complexity of customer billing under such an approach presents problems.⁴⁵

10. The International Communications Association (ICA), Telecommunications Committee of the American Petroleum Institute (API), and Utilities Telecommunications Council (UTC) argue that all special access lines, including those carrying jurisdictionally mixed traffic, should continue to be directly assigned pursuant to the present procedures.⁴⁶ ICA endorses Commission language stating that the existing approach has fostered economic

efficiency and met the needs of the interexchange carriers (IXCs) and their customers, and argues that no other approach will achieve this result.⁴⁷ API argues that direct assignment is the only separations approach that is practical and consistent with the basic nature of these services, including their non-traffic sensitive (NTS) cost characteristics.⁴⁸ UTC states that the present procedure has worked well in the past and argues that no other approach will produce more accurate results.⁴⁹ UTC also argues that the current procedure permits a more accurate and understandable billing system, is consistent with economically rational flat rate pricing for special access services, avoids complications for cost recovery, and furthers the Commission's access charge goals.⁵⁰

11. ICA opposes any apportionment method other than direct assignment. It argues that other methods would create tariff and billing problems and result in increased customer confusion.⁵¹ ICA states that special access customers have already experienced problems due to the high level of rate churn in the special access tariffs, and that separations changes will make planning even more difficult.⁵² API and UTC oppose separations procedures based on usage measurement. API supports those arguing that such an approach would undermine rational pricing, generate rate instability, and increase administrative costs.⁵³ UTC also notes that the LECs cannot measure state and interstate traffic on special access lines except originating WATS traffic.⁵⁴ As a result, it argues that any usage based allocation will be arbitrary and result in differential treatment of special access lines.⁵⁵ UTC also contends that a usage based allocation will increase rate instability, complicate billing and cost recovery, and increase the incentives for bypass.⁵⁶ In addition, API opposes use of a fixed allocation factor or direct assignment based on predominant use.⁵⁷ UTC also opposes use of a fixed allocation factor, arguing that such a factor would be arbitrary and have the same administrative problems as a usage based allocation.⁵⁸ ICA also opposes re-examination of the message/private line categorization as advocated by Southwestern Bell Telephone Co. (Southwestern Bell).⁵⁹

2. Direct Assignment Based on Predominant Use

12. The Ameritech Operating Companies (Ameritech) and New York Telephone Co. and New England Telephone Co. (NYNEX) support direct assignment of mixed use special access lines to the state or interstate jurisdiction based on predominant use as projected by the customer when the line is ordered.⁶⁰ NYNEX argues that the present method based on the "contamination doctrine" fosters tariff shopping as customers seek to avoid higher intrastate rates by adding interstate links to predominantly intrastate private line systems.⁶¹ NYNEX also notes that it has experienced revenue losses due to this phenomena.⁶² Ameritech contends that direct assignment based on predominant use as declared by the customer will reduce tariff shopping and increase the accuracy of the separations process.⁶³ NYNEX adds that this approach represents a sound balance between the need to simplify separations and the desire to allocate costs based on usage.⁶⁴

13. In opposing a usage based allocation, both Ameritech and NYNEX state that usage information is not generally available for special access services with the exception of originating WATS.⁶⁵ In addition, those carriers oppose differential treatment of special access lines

based on measurability.⁶⁶ They also emphasize that direct assignment based on predominant use avoids the billing, administrative and tariff complexities involved in splitting the cost of special access lines between the jurisdictions.⁶⁷ NYNEX also argues that the problems associated with a relative use allocation will create the potential for customer confusion.⁶⁸ NYNEX notes that many of these problems are also inherent in use of a fixed allocation factor.⁶⁹ If the Commission does not adopt direct assignment based on predominant use as declared by the customer, Ameritech argues that it should retain the present system of direct interstate assignment of all special access lines carrying any interstate traffic.⁷⁰

3. Direct Assignment Based on Customer Service Order⁷¹

14. GTE Service Corp. and its affiliated domestic telephone operating companies (GTE), and the United States Telephone Association (USTA) support direct assignment of special access line costs to either the state or interstate jurisdiction based on the tariff from which the customer orders service.⁷² USTA argues that this approach will result in prices that reflect costs and eliminate the differences between state and federal tariff rates.⁷³ Under these conditions, it contends that the jurisdiction chosen by the customer should usually reflect predominant use as anticipated by the customer.⁷⁴ USTA also notes that this approach will allow the Commission to avoid the additional costs and complexity of other alternatives.⁷⁵ GTE emphasizes the need for separations procedures that foster rational pricing of network services, arguing that the costs involved should be recovered through flat-rate, cost-based charges pursuant to state and interstate rate structures that are the same for any given study area.⁷⁶ USTA also argues that direct assignment based on the tariff from which the customer orders service will avoid cost/revenue mismatches.⁷⁷ GTE opposes separation of mixed use special access lines based on procedures reflecting relative use, arguing that this approach will tend to create uneconomic incentives, fail to promote efficient network utilization, waste administrative resources, and inhibit rational pricing.⁷⁸ GTE also emphasizes the need to reduce the artificially stimulated demand for special access service by reducing the interstate Carrier Common Line (CCL) charge.⁷⁹

4. Other Direct Assignment Approaches

15. The New Hampshire Public Utilities Commission (New Hampshire) argues that the cost of "mixed-use special access lines should be directly assigned to the interstate jurisdiction, at least for states which do not allow competition, because any other . . . [approach] . . . would send a message . . . that the FCC will give its blessing to . . . illegal competition."⁸⁰ Pacific Bell suggests that direct assignment of mixed use special access line costs to the state jurisdiction may be an appropriate long term solution.⁸¹

C. Allocation⁸²

1. Allocation Based on Relative Use

16. ALC Communications Corp. (ALC) advocates the allocation of mixed use special access line costs based on relative use in the case of special access lines on which state and interstate traffic measurement is possible.⁸³ It notes that the jurisdictional nature of traffic on WATS

access trunks can usually be measured at the LEC WATS serving office.⁸⁴ It also advocates the use of percent interstate use (PIU) factors for Feature Group A WATS access lines similar to those now used for FGA switched access service.⁸⁵ ALC advocates continued direct assignment of special access lines for which jurisdictional traffic measurement is not practical.⁸⁶ The State of California and the California Public Utilities Commission (California) advocate the allocation of mixed use special access line costs based on relative state and interstate usage reflecting either actual traffic measurement or estimates developed through special studies.⁸⁷ California argues that this method is desirable because it reflects long-standing separations principles.⁸⁸ In addition, ALC suggests recovering the cost of the dedicated portion of WATS access lines *pro rata* from the state and interstate tariffs. Under this procedure, if half of the traffic is interstate, the customer would pay half of the interstate rate and half of the state rate.⁸⁹ ALC argues that this procedure would alleviate state concerns about revenue requirement shortfalls and promote economic efficiency by allowing the provision of both state and interstate WATS service over a single line.⁹⁰

17. Pacific Bell opposes continued direct interstate assignment of measurable mixed use special access line costs.⁹¹ The National Telephone Cooperative Association (NTCA) also opposes direct assignment.⁹² It argues that the present procedure could undermine the current philosophy of jurisdictional separations and result in questionable preemption of state authority.⁹³ Pacific Bell contends that interstate assignment of mixed use lines unjustifiably deprives the states of revenues that could be used to support local exchange rates, and fosters tariff shopping.⁹⁴ Pacific also argues that the present procedure will generate jurisdictional conflicts as both federal and state regulators attempt to assert jurisdiction over new services.⁹⁵

18. Pacific Bell supports the allocation of measurable mixed use lines between the jurisdictions based on relative use as an interim measure.⁹⁶ However, Pacific states that continuation of the current method may be acceptable for lines on which traffic cannot be measured.⁹⁷ NTCA suggests phasing out the provision of mixed use special access lines as one means of dealing with these issues.⁹⁸ NTCA argues that if the provision of mixed use special access lines is deemed to be in the public interest, equipment must be built into the network to allow the LECs to measure traffic on these lines.⁹⁹ It opposes any apportionment method that requires the LECs to rely on customer provided usage information as well as any method that causes revenues to define jurisdictional cost allocations.¹⁰⁰ Pacific opposes use of a fixed allocation factor in separating the cost of special access lines which carry state and interstate traffic that can be measured.¹⁰¹

19. Pacific also states that it expects additional services using mixed use special access lines will be developed, and argues that the Joint Board should postpone development of a long term solution to this problem until more of these services have been introduced.¹⁰² As previously mentioned, it also suggests direct intrastate assignment as a possible long term solution. Although NTCA states that no solution is obvious at present, it argues that steps must be taken to allow the LECs to measure usage accurately and assign costs to the proper jurisdiction.¹⁰³

2. Fixed Allocation Factor

20. If separations changes are deemed necessary, AT&T contends that the Commission should develop a nationwide fixed percentage interstate allocation factor for mixed use special access lines, although it states that this approach raises concerns regarding customer confusion and economic efficiency.¹⁰⁴

D. Other Proposals

21. Southwestern Bell argues that the Commission should consider initiation of an expanded inquiry to re-examine the desirability of the message/private line categorization.¹⁰⁵ It contends that the potential anomalies created by this classification are increasingly evident as the LECs introduce new services that do not fit the traditional categorizations.¹⁰⁶ Southwestern Bell states that all special access lines should continue to be directly assigned during the interim in order to avoid jurisdictional shifts in cost allocations and administrative problems.¹⁰⁷ It argues that interim use of direct assignment based on predominant use will produce basically the same results as the current procedures if based on the customer's declaration.¹⁰⁸ Southwestern Bell also contends that allocation of mixed use special access lines based on relative use as an interim measure could shift costs to the state jurisdiction and result in unnecessary expenditures to improve measurement capability.¹⁰⁹ BellSouth Corp., South Central Bell Telephone Co., and Southern Bell Telephone and Telegraph Co. (BellSouth) state that separations changes in this area could result in unexpected jurisdictional cost and revenue shifts.¹¹⁰ Southwestern also opposes measures that would allocate the cost of some, but not all, special access lines on the basis of relative use.¹¹¹ It emphasizes that any change in the current procedures requires substantial study because of the potential ramifications.¹¹² In addition, BellSouth stresses the need for careful consideration of the issues in this proceeding due to their complexity.¹¹³

III. DISCUSSION

22. As the record in this proceeding indicates, a variety of options might be used to separate special access costs. These methods can be grouped into two basic categories: (1) methods of directly assigning the entire cost of each mixed use special access line to either the state or federal jurisdiction; and (2) plans for allocating the cost of each such line between the jurisdictions. Under the present procedures, mixed use special access line costs are directly assigned to the interstate jurisdiction. Other examples of direct assignment include assignment of all such lines to the state jurisdiction, and direct assignment of each line to one jurisdiction or the other based on the customer's service order or predominant use. Examples of allocation-based approaches include division of the cost of each mixed use line between the jurisdictions based on relative state and interstate use or a fixed allocation factor.

23. The separations procedures perform an important role in defining the separate state and federal regulatory spheres, and thus have a major effect on both jurisdictions. Accordingly, we must endeavor to develop separations procedures that properly balance state and federal interests in the regulation of mixed use special access lines. Our concern with achieving a proper balance be-

tween federal and state interests also leads us to conclude that the opportunities for "tariff shopping" inherent in the current procedures should be reduced.

24. In proposing separations procedures we must also carefully consider the administrative implications of the various options before us. This Joint Board as well as the Joint Board in CC Docket No. 86-297 have devoted substantial efforts to simplifying the separations procedures.¹¹⁴ Accordingly, we must make every effort to ensure that the revised separations procedures will not generate additional administrative costs or complexities for the carriers or their customers.¹¹⁵ We must also consider economic efficiency in making our recommendations for new separations procedures.¹¹⁶

25. In initiating this proceeding, the Commission stated that direct assignment of special access lines has resulted in pricing approaches that have satisfied the needs of the carriers and their customers and fostered economic efficiency. It added that parties supporting other alternatives should describe how their proposals would produce similar benefits.¹¹⁷ Based on a careful review of the record in this proceeding, we conclude that direct assignment of special access costs is superior to an allocation-based approach in terms of administrative simplicity and economic efficiency. We believe that proposals for allocating the cost of each special access line between the state and interstate jurisdictions based on relative use or a fixed allocation factor must be rejected because any benefits associated with these apportionment methods are greatly outweighed by the disadvantages of those methods. Allocation of mixed use special access line costs based on relative use would require additional traffic studies that are not necessary under a direct assignment approach. Conducting such traffic studies would involve substantial difficulties since the present record establishes that the LECs cannot readily measure state and interstate special access traffic except traffic that transits a switch on the originating end as in the case of WATS service.¹¹⁸ The parties also indicate that many special access customers do not measure their relative state and interstate special access traffic and cannot do so without incurring additional expenses.¹¹⁹ The parties also state that using customer traffic measurements to supplement the LECs' limited measurement capabilities would create opportunities for tariff shopping.¹²⁰ This would tend to generate carrier/customer disputes concerning the accuracy of the resulting usage data. Development of a flat allocation factor could also require traffic data.¹²¹ However, the problems involved would tend to be more limited than in the case of a usage based allocation that changed with traffic patterns since traffic studies would not have to be repeated regularly if a fixed allocation factor were used.¹²²

26. Allocating the cost of each mixed use special access line between the jurisdictions would also undermine the current efforts to simplify the separations process. An allocation would necessitate significant changes in the LECs' present billing systems that reflect the historical practice of assigning the entire cost of each special access line to one jurisdiction or the other.¹²³ More importantly, an allocation-based approach would greatly complicate the tariffing and billing for special access lines. At present, special access customers order each access line from a single tariff. If the cost of each mixed use special access line were split between the jurisdictions, the costs allocated to the interstate jurisdiction would be recovered through interstate tariffs while the costs allocated to the

state jurisdiction would be recovered through state charges. This would greatly complicate customer bills since both state and interstate charges would apply to each mixed use special access line.¹²⁴ Several of the commenting parties also state that the added complexity of this approach would require that special access customers devote additional time and expense to verifying the accuracy of their bills and tend to generate an increase in the number of billing disputes. A usage-based allocation approach could also undermine economic efficiency by necessitating LEC investment in additional traffic measurement equipment that would not otherwise be necessary.¹²⁵ In addition, it would be difficult to maintain the current flat rate pricing of special access if costs were apportioned on a usage basis.¹²⁶ The existing pricing mechanism has fostered economic efficiency,¹²⁷ and we do not wish to propose separations changes that could lead to pricing procedures that reduce economic efficiency.

27. We recognize that a flat allocation factor or a usage-based allocation applied only to measurable mixed use lines would not produce all of the undesirable results inherent in a usage-based allocation for all mixed use special access lines. Although these methods would reduce the measurement problems previously discussed, such methods would generate the same administrative problems as application of a usage based allocation approach to all mixed use special access lines. The LECs would have to revise their billing systems, and customers would be faced with substantially more complex bills.¹²⁸ Based on these administrative considerations, we conclude that both of these options must be rejected. We also note that a usage-based allocation limited to measurable mixed use special access lines would create pressure for abandonment of flat rate pricing for these lines, undermining economic efficiency. Moreover, the use of different apportionment methods for different special access lines could result in discrimination between measurable and unmeasurable mixed use special access lines, and could produce artificial changes in the competitive marketplace for services offered by AT&T's competitors that have been structured to use dual jurisdictional special access lines.¹²⁹

28. We do not believe that an allocation-based method has benefits that outweigh the substantial disadvantages we have described. As parties supporting a usage based or fixed allocation factor indicate, these methods could be used to reduce opportunities for tariff shopping and to recognize state regulatory interests. However, we conclude that these objectives can be achieved equally well under a direct assignment method without the substantial administrative difficulties or undesirable effects upon economic efficiency that allocating the costs of mixed use special access lines between the jurisdictions would produce.

29. A substantial majority of the commenting parties advocate some form of direct assignment. Many parties state that use of a direct assignment method will avoid the difficulties inherent in an allocation-based methodology and foster administrative simplicity and economic efficiency. Direct assignment should not require additional traffic studies and reports or necessitate changes in the LEC billing systems. Nor will direct assignment increase the complexity of special access customers' bills. Direct assignment will also avoid the need for investment in additional traffic measurement equipment. Furthermore, direct assignment is compatible with the present system of economically efficient flat rate pricing of special access

lines. At the same time, we believe that a proper recognition of state and federal regulatory interests can be achieved under a direct assignment approach.

30. Several methods could be used to assign the entire cost of each special access line to one jurisdiction or the other. Many of the parties supported direct interstate assignment of all mixed use special access line costs.¹³⁰ Others suggested direct assignment based on the tariff from which the customer orders service.¹³¹ Still others suggested direct assignment based on predominant use.¹³² We cannot recommend continuing a system in which all facilities carrying interstate traffic, no matter how little the amount, are obtained from the interstate tariff, and the costs of such facilities are assigned to the interstate jurisdiction. This allows customers to evade state tariff regulation merely by adding *de minimis* amounts of interstate traffic to private lines carrying intrastate communications. Such actions significantly undermine state regulatory authority. We believe that direct intrastate assignment of mixed use special access lines carrying *de minimis* amounts of interstate traffic represents a major improvement over the current procedure. The interstate traffic on a special access line would be deemed *de minimis* for separations purposes when it amounts to ten percent or less of the total traffic on the line.

31. The record indicates that some largely intrastate systems carry small amounts of interstate traffic. The conflicts about state versus federal tariffing of special access service to date usually involve such situations. For example, NYNEX says that it has experienced problems with "tariff shopping" in which customers add an interstate leg to a multipoint private line network in order to obtain the lower interstate special access rates for those segments of the system with minimal interstate traffic.¹³³ Even though NYNEX indicates that small amounts of interstate traffic are involved, it argues that this results in a significant loss in intrastate revenues.¹³⁴ The situation described in the petition for declaratory ruling filed with the Commission by the New York Telephone Co. (NY Tel.) appears to be an example of this pattern. The NY Tel. petition, which was filed on August 17, 1987, asked the Commission to find that the New York Lottery private line network was not converted into an interstate network as the result of the addition of two physically interstate lines to approximately 5,000 physically intrastate private line circuits. We recognize that a somewhat larger or smaller percentage of interstate traffic could be deemed *de minimis*, but our experience and the present record indicate that the test we recommend is reasonable and would be sufficient to address the existing problems. We believe that it will ensure a fair and reasonable allocation of special access costs between the jurisdictions.¹³⁵ Accordingly, we are not persuaded that more substantial changes in the *status quo* are necessary or desirable.¹³⁶

32. As previously indicated, we have selected the proposed separations treatment for mixed use special access lines, in large part, due to administrative concerns. We believe that the benefits of this method can best be achieved through customer certification that each special access line carries more than a *de minimis* amount of interstate traffic.¹³⁷ While we have some reservations about recommending a uniform, nationwide verification system for separations purposes, we believe that many of the benefits inherent in the system we are proposing could be lost through overly burdensome verification requirements. Thus, we recommend that, for separations

purposes, verification of customer representations concerning relative state and interstate traffic levels be carefully circumscribed. In determining the jurisdiction to which mixed use special access lines are to be assigned, the LECs should only require verification when the customer representations involved appear questionable. Such verification should also be limited to general information concerning system design and functions whenever possible. In particular, we believe that, absent extraordinary circumstances, the LECs should not require usage information in the process of verifying the separations treatment of mixed use special access lines unless such information is readily available without special studies. This approach may occasionally allow customers to misrepresent their traffic patterns in order to obtain favorable tariff treatment. However, in light of the fact that the typical situation involves physically intrastate systems carrying very small amounts of interstate traffic,¹³⁸ we do not expect close cases requiring verification to arise frequently. Thus, the risk of tariff shopping is greatly outweighed by the need to avoid the substantial administrative burdens involved in a more precise verification system.

33. We believe that this method satisfies the requirements of the Communications Act and the relevant case law. The fundamental principles of separations were described by the Supreme Court in *Smith v. Illinois Bell Telephone Co.*, 282 U.S. 133 (1930) (*Smith*) which holds that the separation of telephone company plant is necessary to proper rate regulation. The Court stated that "this subject [separations] requires consideration, to the end that by some practical method the different uses of the property may be recognized . . ." 282 U.S. at 151. The Court also stated that "extreme nicety is not required, only reasonable measures being essential . . ." *Id.* at 150. While separations procedures often reflect usage, this is not always the case. In fact, a number of court decisions reviewing separations changes recommended by this Joint Board specifically sanction consideration of non-usage based factors in the development of separations procedures.¹³⁹ We believe that use of a direct assignment methodology is consistent with the principles established in *Smith* and the subsequent court decisions. This conclusion is based on the serious administrative problems that would result from an allocation-based approach, as well as the undesirable implications of such an approach for economic efficiency. Moreover, we believe that our recommended approach will solve existing problems in apportioning mixed use special access lines, and accord proper recognition to state and federal regulatory interests.¹⁴⁰

34. In recommending this approach to the Commission, we recognize that the issues before us in this proceeding may need to be re-examined at some time in the future as a result of changes in technology and in the way telecommunications services are provided. Increased use of switched private line systems and services, more sophisticated switching and signaling technology, as well as the deployment of fiber optics may eventually blur the distinction between message and private line services, and perhaps change the economics of telecommunications service provisioning. Southwestern Bell has already requested a re-examination of the present message/private line categorization in this proceeding, and several other parties indicated support for broader proceedings to consider the implications of new service offerings and technological changes.¹⁴¹ We do not believe that broader proceedings

such as these are appropriate at present. Given the difficulties inherent in predicting the direction in which the telecommunications industry will evolve and the nature and pace of technological developments, we conclude that we should limit our recommendations to proposals for modest changes in the rules designed to resolve the limited problems presently before us.¹⁴²

IV. CONCLUSION

35. For the reasons discussed above, we conclude that allocation of mixed use special access line costs based on relative use or a fixed allocation factor must be rejected. Thus, we agree with the substantial majority of the parties that direct assignment of the cost of mixed use special access lines must be continued to preserve administrative simplicity and economic efficiency. Although many of the parties support the current procedure, we do not believe that procedure represents a sound balancing of state and federal regulatory interests. As a result, we recommend that the Commission modify the current separations procedures to assign the cost of mixed use special access lines to the state jurisdiction whenever special access lines carry largely intrastate traffic and *de minimis* amounts of interstate traffic. We believe that the rule we recommend will solve existing difficulties while fostering administrative simplicity and economic efficiency.

V. ORDERING CLAUSE

36. Accordingly, this Joint Board RECOMMENDS, that the Commission adopt the attached revisions to Part 36 of the Commission's rules implementing the separations changes discussed above.¹⁴³

FOR THE FEDERAL-STATE JOINT BOARD

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

ATTACHMENT A

Commenting Parties Separations Treatment of Mixed Use Special Access Lines CC Docket Nos. 78-72 & 80-286

Party	Comments	Reply
AT&T	X	X
MCI	X	X
ALC	X	
Ameritech	X	X
Bell Atlantic	X	X
BellSouth	X	
NYNEX	X	X
Pacific Bell	X	X
Southwestern Bell	X	X
US West	X	

GTE	X	X
United	X	
Cincinnati Bell	X	
Contel	X	
USTA	X	
NTCA	X	
API		X
ICA	X	X
UTC	X	
California	X	
New Hampshire	X	

ATTACHMENT B

1. Amend Section 36.154(a) of the Commission's rules to read as follows, effective 30 days after Federal Register publication of a summary of the Commission order acting on our recommendations:

(a) * * * *

Subcategory 1.1 - * * * * This subcategory shall include all private lines and WATS lines carrying exclusively state traffic as well as private lines and WATS lines carrying both state and interstate traffic if the interstate traffic on the line involved constitutes ten percent or less of the total traffic on the line.

Subcategory 1.2 - * * * * This subcategory shall include all private lines and WATS lines that carry exclusively interstate traffic as well as private lines and WATS lines carrying both state and interstate traffic if the interstate traffic on the line involved constitutes more than ten percent of the total traffic on the line.

FOOTNOTES

¹ MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules, 1 FCC Rcd 1287 (1986) (*Order Inviting Comments*). After initiation of this phase of the proceeding, the Commission changed the name of the proceeding to reflect the fact that the separations rules formerly contained in Part 67 have been revised and incorporated in Part 36 of the Commission's rules.

² See *Order Inviting Comments* note 1 *supra*. Prior to that decision, the cost of closed end WATS access lines had been included in the separations category for ordinary subscriber access lines (common lines) used for local, state toll and interstate toll services. The Commission subsequently revised the separations procedures based on a recommendation prepared by this Joint Board and included closed end WATS access lines in the same category as other special access lines used in conjunction with private line services. MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules, 51 F.R. 7,942 (March 7, 1986), *recon.* 1 FCC Rcd 1287 (1986).

³ *Order Inviting Comments*, note 1 *supra* at 1289.

⁴ *Id.* at 1289-1290.

⁵ *Id.* at 1290.

⁶ *Id.* at 1289.

⁷ *Id.*

⁸ *Id.* at 1290.

⁹ The parties filing comments and/or replies are listed in Attachment A.

¹⁰ Chesapeake and Potomac Telephone Company of Maryland Petition for Declaratory Ruling Regarding Intrastate Private Lines Used in Interstate Communications, 2 FCC Rcd 3528 (1987). This decision affirmed the prior Commission ruling in this proceeding, FCC 85-465, released August 16, 1985.

¹¹ The Hecht company appealed this decision.

¹² The Hecht Co. v. FCC, Slip Opinion, Case No. 87-1396 (D.C. Cir., filed Dec. 7, 1987). See also, Chesapeake and Potomac Telephone Company of Maryland, 3 FCC Rcd 748 (1988).

¹³ The existing separations rules contain subcategories for: (1) state private lines and state WATS lines; (2) interstate private lines and interstate WATS lines; and (3) subscriber or common lines used jointly for local exchange service and state and interstate interexchange access. However, they do not specifically address the treatment of private lines or WATS lines that carry both state and interstate traffic. See Section 36.154 (a) of the Commission's Rules, 47 C.F.R. § 36.154 (a) (1987).

¹⁴ Under the "contamination doctrine," all special access lines carrying interstate traffic are subject to federal regulatory authority, and the costs of such lines are directly assigned to the interstate jurisdiction. The terminology reflects the fact that, under this approach, any interstate traffic is deemed to "contaminate" the service, even when the facilities involved are physically intrastate, and thus bring the service under federal regulation.

¹⁵ "Direct assignment" describes the assignment of the cost of each special access line entirely to either the state or federal jurisdiction for separations purposes. Under this approach, the cost of each line would be recovered through tariffs filed with one jurisdiction or the other.

¹⁶ The comments filed by several parties supporting direct assignment are not entirely clear in their description of the principles for determining the jurisdiction to which special access lines would be directly assigned. For example, certain parties state that they support the current separations procedures or argue that the Commission should continue to directly assign special access line costs, although they do not refer to the contamination doctrine or explicitly recognize that the cost of mixed use lines should be allocated to the interstate jurisdiction under the existing tariff and separations procedures. Since the Commission's initial decision in the *Hecht* proceeding, *supra* note 10, which provides that mixed use private line service is to be ordered from the federal tariffs, predates the filing of the comments in this proceeding, we have included such filings supporting the *status quo* in this section unless other language indicates that another basis for direct assignment is contemplated.

¹⁷ AT&T Reply at 1-2 and 10; MCI Comments at 1 and 6; MCI Reply at 3. (AT&T supports use of a fixed factor for the allocation of mixed use private line costs in its Comments, AT&T Comments at 7, but changes its position in its Reply.)

¹⁸ AT&T Reply at 3 and 5.

¹⁹ MCI Comments at 5-6; MCI Reply at 1.

²⁰ MCI Comments at 5.

²¹ *Id.* at 3-5.

²² In this Recommended Order, we use the term "apportionment" to encompass any means of separating telephone company costs. Direct assignment and allocation are both methods of apportioning costs.

²³ AT&T Comments at 5-6; AT&T Reply at 4-5.

²⁴ AT&T Comments at 5-7; AT&T Reply at 5-6.

²⁵ AT&T Reply at 8-9.

²⁶ Bell Atlantic Comments at 1 and 6; Bell Atlantic Reply at 4; US West Comments at 16-19.

²⁷ Bell Atlantic Comments at 2-3 and 6.

²⁸ US West Comments at 16-17.

²⁹ The term "tariff shopping" describes the efforts of customers to obtain service from either the state or interstate tariff depending on which the customer perceives as most advantageous.

³⁰ US West Comments at 17-19.

³¹ Bell Atlantic Comments at 3; Bell Atlantic Reply at 3.

³² US West Comments at 12.

³³ *Id.* at 13-14.

³⁴ *Id.* at 15-16.

³⁵ Bell Atlantic Comments at 3-4 and 6.

³⁶ *Id.* at 5; Bell Atlantic Reply at 5.

³⁷ Cincinnati Bell Comments at 2-3; Contel Comments at 4.

³⁸ United Comments at 3.

³⁹ *Id.* at 4.

⁴⁰ Contel Comments at 2.

⁴¹ United Comments at 3-4.

⁴² Contel Comments at 2-3.

⁴³ Cincinnati Bell Comments at 2.

⁴⁴ *Id.*

⁴⁵ Contel Comments at 3.

⁴⁶ ICA Comments at 1 and 6; ICA Reply at 1 and 6; API Reply at 3 and 7-8; UTC Reply at 3 and 8-9.

⁴⁷ ICA Comments at 2-3; ICA Reply at 3.

⁴⁸ API Reply at 4-5.

⁴⁹ UTC Reply at 3-4.

⁵⁰ *Id.* at 6 and 8-9.

⁵¹ ICA Comments at 3-4 and 6; ICA Reply at 3 and 6.

⁵² ICA Comments at 5.

⁵³ API Reply at 3-5.

⁵⁴ UTC Reply at 4-5.

⁵⁵ *Id.* at 4-6.

⁵⁶ *Id.* at 6 and 9.

⁵⁷ API Reply at 6-8.

⁵⁸ UTC Reply at 7-8.

⁵⁹ ICA Reply at 5-6.

⁶⁰ Ameritech Comments at 1, 3 and 10; Ameritech Reply at 1-2 and 7; NYNEX Comments at 3 and 6-8; NYNEX Reply at 1-2, 5 and 10.

⁶¹ NYNEX Comments at 3-5; NYNEX Reply at 5-7.

⁶² NYNEX Comments at 4-5; NYNEX Reply at 6.

⁶³ Ameritech Comments at 8-9; Ameritech Reply at 2.

⁶⁴ NYNEX Reply at 10.

⁶⁵ Ameritech Comments at 4; Ameritech Reply at 3; NYNEX Comments at 5; NYNEX Reply at 3.

⁶⁶ Ameritech Comments at 4; Ameritech Reply at 5-6; NYNEX Reply at 3.

⁶⁷ Ameritech Comments at 6; Ameritech Reply at 2; NYNEX Comments at 3; NYNEX Reply at 8 and 10.

⁶⁸ NYNEX Reply at 8.

⁶⁹ *Id.* at 9.

⁷⁰ Ameritech Reply at 7.

⁷¹ See note 16 *supra*.

⁷² GTE Reply at 4, 6 and 12; USTA Comments at 7-8 and 10.

⁷³ USTA Comments at 8.

⁷⁴ *Id.*

- ⁷⁵ *Id.* at 5 and 10.
- ⁷⁶ GTE Comments at 7-9 and 13-16; GTE Reply at 4-6 and 12.
- ⁷⁷ USTA Comments at 9-10.
- ⁷⁸ GTE Comments at 12-13; GTE Reply at 8-10.
- ⁷⁹ GTE Comments at 1, 3-7 and 15-16; GTE Reply at 2-3.
- ⁸⁰ New Hampshire Comments at 2-3.
- ⁸¹ Pacific Bell Comments at 6; Pacific Bell Reply at 3.
- ⁸² Allocation methods would divide the cost of each mixed use special access line between the state and federal jurisdictions. If the costs were allocated, separate state and federal tariffs would be needed to recover these costs unless the services involved were unregulated in one jurisdiction or the other.
- ⁸³ ALC Comments at 4-6 and 8.
- ⁸⁴ *Id.* at 6.
- ⁸⁵ *Id.*
- ⁸⁶ *Id.* at 7-9.
- ⁸⁷ California Comments at 2.
- ⁸⁸ *Id.*
- ⁸⁹ ALC Comments at 6-7.
- ⁹⁰ *Id.* at 7.
- ⁹¹ Pacific Bell Comments at 6; Pacific Bell Reply at 3-6.
- ⁹² NTCA Comments at 2-4.
- ⁹³ *Id.* at 2.
- ⁹⁴ Pacific Bell Reply at 3-4 and 7.
- ⁹⁵ Pacific Bell Comments at 4.
- ⁹⁶ *Id.* at 2 and 5-6; Pacific Bell Reply at 2-4 and 7.
- ⁹⁷ Pacific Bell Reply at 3-4.
- ⁹⁸ NTCA Comments at 3-4.
- ⁹⁹ *Id.* at 3.
- ¹⁰⁰ *Id.* at 4-5.
- ¹⁰¹ Pacific Bell Reply at 5-6.
- ¹⁰² Pacific Bell Comments at 3 and 6-7; Pacific Bell Reply at 3 and 8-9.
- ¹⁰³ NTCA Comments at 4-5.
- ¹⁰⁴ AT&T Reply at 10. *See* note 17 *supra*.
- ¹⁰⁵ Southwestern Bell Comments at 2 and 3-4; Southwestern Bell Reply at 1 and 6.
- ¹⁰⁶ Southwestern Bell Comments at 2-4.
- ¹⁰⁷ *Id.* at 4; Southwestern Bell Reply at 1-2.
- ¹⁰⁸ Southwestern Bell Reply at 3-4.
- ¹⁰⁹ *Id.* at 4-5.
- ¹¹⁰ BellSouth Comments at 3.
- ¹¹¹ Southwestern Bell Reply at 5.
- ¹¹² *Id.* at 3.
- ¹¹³ BellSouth Comments at 3-4.
- ¹¹⁴ This Joint Board recommended, and the Commission subsequently adopted, major changes in the separations procedures for central office equipment designed, among other things, to simplify these rules. Amendment of Part 67 of the Commission's Rules, 2 FCC Rcd 2551 (1987) (*Joint Board Recommendation*), adopted, MTS and WATS Market Structure and Amendment of Part 67 (New Part 36) of the Commission's Rules, 2 FCC Rcd 2639 (1987) (*Conformance Order*), recon. granted in part, 2 FCC Rcd 5349 (1987) and 3 FCC Rcd 5518 (1988). The CC Docket No. 86-297 Joint Board also recommended numerous simplification changes in conjunction with its revisions designed to conform the separations procedures to the new Uniform System of

Accounts. Amendment of Part 67 (New Part 36) of the Commission's Rules, 2 FCC Rcd 2582 (1987). These measures were also adopted by the Commission in the *Conformance Order supra*.

¹¹⁵ In the context of this proceeding, our concern with administrative simplicity includes the following factors: (1) the need for additional traffic studies or reports; (2) the necessity for changes in the current LEC billing systems; (3) possible increases in the complexity of customer bills that could cause additional difficulties in interpreting and verifying bills; and (4) the potential for an increase in the number of carrier/customer disputes concerning separations treatment, tariffing or traffic measurement.

¹¹⁶ Our concern with economic efficiency includes consideration of whether a particular option would tend to require investment in additional traffic measurement equipment, and whether it is consistent with the present system of flat rate pricing of special access service. We must also consider whether a particular option is compatible with use of a single special access line for both state and interstate traffic since it is generally more efficient to allow customers to consolidate state and interstate traffic on a single set of access lines than to require the use of separate lines.

¹¹⁷ *See* para. 3 *supra*.

¹¹⁸ *See, e.g.,* Ameritech Comments at 4; Ameritech Reply at 3; Bell Atlantic Comments at 3; Bell Atlantic Reply at 3; NYNEX Comments at 5; NYNEX Reply at 3; US West Comments at 12-14; United Comments at 3-4; Contel Comments at 2.

¹¹⁹ *See, e.g.,* US West Comments at 13-14; Ameritech Comments at 8; NTCA Comments at 4; Cincinnati Bell Comments at 2.

¹²⁰ *See, e.g.,* US West Comments at 13-14. *See also* GTE Reply at 9; NTCA Comments at 4.

¹²¹ A fixed allocation factor need not reflect relative use, but usage information would be one consideration in the development of such a factor for special access lines.

¹²² Occasional traffic studies might be necessary in the case of a fixed allocation factor intended to reflect relative state and interstate use, although such studies should be much less frequent than they would be if a dynamic relative use allocation factor were employed.

¹²³ *See, e.g.,* US West Comments at 15-16; Ameritech Comments at 6; NYNEX Reply at 3-4, 8 and 10; USTA Comments at 5 and 10; AT&T Reply at 3 and 5.

¹²⁴ The administrative problems and the potential for customer confusion associated with an allocation-based approach would be particularly great if the federal and state special access tariffs contained different rate elements.

¹²⁵ *See, e.g.,* Bell Atlantic Reply at 3; United Comments at 3-4; Cincinnati Bell Comments at 2; USTA Comments at 5 and 10.

¹²⁶ *See, e.g.,* AT&T Comments at 6-7, AT&T Reply at 5-6; Ameritech Comments at 5; API Reply at 4-5; GTE Reply at 8-9. A usage-based allocation would change over time with traffic patterns, creating fluctuations in the state and interstate revenue requirements. A pricing mechanism based on usage would tend to cause revenues to track changes in usage-based cost allocations, reducing the chances of cost/revenue mismatches. Although flat rate charges are used to recover certain non-recurring switched access costs that are allocated on a usage sensitive basis, *see* Pacific Bell Reply at 6, the incentives for usage based recovery of costs allocated on a traffic sensitive basis remain.

¹²⁷ Flat rate pricing for dedicated NTS facilities, such as special access lines, can stimulate usage, allowing existing facilities to carry additional traffic. As a result, this approach can be more efficient than usage based pricing for such facilities. Usage sensitive pricing for mixed use special access lines could also discourage high volume users from combining their state and interstate special access traffic on one set of access lines since their usage based charges could easily exceed the full cost of the facilities involved. Any allocation-based approach would also tend to discourage dual jurisdictional use of special access lines to the extent that the cost of the added administrative complexities outweighed the savings that could be achieved through traffic consolidation.

¹²⁸ See, e.g., US West Comments at 15-16; Bell Atlantic Comments at 4; NYNEX Reply at 3-4, 8 and 10; AT&T Reply at 3; Ameritech Comments at 6. Applying a usage-based allocation approach solely to measurable mixed use special access lines would reduce the extent to which customers experienced the additional tariff and billing complexities inherent in an allocation based approach, although such an approach would still produce substantial problems.

¹²⁹ See MCI Comments at 3-5.

¹³⁰ See paras. 6-11 *supra*.

¹³¹ See para. 14 *supra*.

¹³² See paras. 12-13 *supra*.

¹³³ NYNEX Comments at 4-5; NYNEX Reply at 6.

¹³⁴ NYNEX Reply at 6.

¹³⁵ New Hampshire has expressed concern that the intrastate allocation of mixed use special access line costs could signal approval of illegal intrastate competition. See para. 15 *supra*. States restricting intrastate competition must, of course, bear primary responsibility for enforcing these restrictions. However, we do not believe that adoption of our recommendation will undermine state authority or indicate approval of competitive activity that violates state requirements or prohibitions.

¹³⁶ We note that direct assignment based on the tariff from which the customer orders service would sanction "tariff shopping," allowing customers to obtain service pursuant to either the state or federal tariff. Such a rule would undermine the proper exercise of state and federal regulatory authority.

¹³⁷ We recognize that a large portion of special access traffic may not be subject to measurement by the LEC or by the customer. As a result, some customers may not be able to determine the proportion of interstate traffic carried by each special access line with a high level of precision. However, we believe that customers should be able to develop sufficiently accurate certifications based on information concerning system configuration and the nature of their communications needs.

¹³⁸ See para. 31 *supra*.

¹³⁹ The United States Court of Appeals for the District of Columbia (D.C.) Circuit has sanctioned the Commission's decision to adopt this Joint Board's recommendation for use of a flat 25 percent interstate allocation factor in the separation of subscriber line costs. *Rural Telephone Coalition v. FCC*, 838 F.2d 1307 at 1313-1315 (D.C. Cir. 1988). This decision also approved assistance for telephone subscribers in high cost areas to be implemented through separations procedures providing for an additional interstate cost allocation for high cost LECs. *Id.* at 1315-1316. That Court also upheld separations procedures that phase customer premises equipment (CPE) out of the separations process gradually over a five year period in order to avoid adverse effects on intrastate rates previously supported by CPE revenues. That CPE transition apportions some costs to the interstate jurisdiction even though the actual equipment in-

involved may have been sold or otherwise removed from the LEC rate base. *MCI Telecommunications Corp. v. FCC*, 750 F.2d 135 at 141-142 (D.C. Cir. 1984).

¹⁴⁰ We believe that the suggestion, mentioned briefly in Pacific's comments, that the separations procedures directly assign all mixed use special access lines to the state jurisdiction must be rejected because it fails to recognize legitimate federal regulatory interests in this area. We also recommend that the Commission reject NTCA's suggestion that it bar dual jurisdictional use of special access lines since dual jurisdictional use fosters economic efficiency.

¹⁴¹ See para. 21 *supra*.

¹⁴² While certain parties suggest that the Commission defer action in this proceeding until more services employing mixed use special access lines are introduced, we believe that the problems inherent in the existing separations procedures warrant changes in the rules at this time.

¹⁴³ We recommend these changes in Part 36 of the Commission's Rules pursuant to Sections 1, 201 through 205, 221 (c), and 410 (c) of the Communications Act of 1934 as amended, 47 U.S.C. §§ 1, 201-205, 221 (c) and 410 (c).