

Statement of Chairman Richard E. Wiley  
In which Commissioners Reid, Washburn and Quello Join  
In re  
AT&T TELPAK Proceeding, Docket No. 19128

Nearly six years ago, the Commission rejected the very same relief that is being sought today -- termination of the Common Carrier Bureau's participation in the decision-making process of Docket 18128. See 25 FCC 2d 834 (1970). Since that time, the Commission has taken a number of steps in the direction of separating the adversarial and decision-making functions of its staff. In 1974, the Commission amended its rules to provide for a separated trial staff in restricted common carrier rulemaking proceedings. See 47 FCC 2d 1183. More recently, the Commission adopted amendments to its rules (effective July 1, 1976) to provide that "in the case of ratemaking proceedings conducted under Section 201-205 of the Communications Act, the presumption shall be that the presiding officer shall prepare an initial or recommended decision." 47 CFR 1.267(a).

If the question of separating the functions of the Bureau in this proceeding were being addressed for the first time, I believe that the better approach -- from the standpoint of sound administrative procedure, but not necessarily as a matter of mandatory procedural due process -- would be to grant the relief requested. And, certainly, this is my and the Commission's announced intention in future cases. Quite frankly, however, the time has passed when such an approach is feasible in the instant proceeding. The Court of Appeals has mandated that time is of the essence in this important and extremely complex docket and has established a deadline for its administrative conclusion. At this late date, the Commission realistically cannot turn to an entirely new staff which is unfamiliar with the complicated and interrelated issues raised in this rulemaking. Instead, I believe that the Commission must proceed, with appropriate caution, to consider the Bureau's Recommended Decision with the assistance of all available staff resources.

In the final analysis, I am satisfied that our action, although not optimum from my personal point of view, does not represent a denial of procedural due process. Moreover, in light of the indicated time constraints facing the Commission, this approach is both appropriate and pragmatically necessary.