

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Separations)	CC Docket No. 80-286
Seeks Comment on Proposal for Interim)	
Adjustments to Jurisdictional Separations)	
Allocation Factors and Category)	
Relationships and Seeks Comment on)	
Comprehensive Reform)	

COMMENTS OF JOHN STAURULAKIS, INC.

John Staurulakis, Inc. (“JSI”) hereby files these comments in response to the invitation of the Federal-State Joint Board on Separations (“Joint Board”) to comment on a proposal submitted by the state members of the Joint Board for an interim adjustment of separations allocation factors and category relationships pending comprehensive separations reform (“State Members’ Interim Proposal”) and on issues related to comprehensive permanent separations reform.¹

JSI is a full-service telecommunications consulting firm offering regulatory, financial and business development services to more than two hundred rate-of-return rural incumbent local exchange carriers (“LECs”) throughout the United States. As part of its services, JSI assists incumbent LECs in the preparation and submission of jurisdictional cost studies and Universal Service Fund data to the National Exchange Carrier Association (“NECA”). JSI is uniquely qualified to comment on proposals regarding separations reform.

¹ See *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, Public Notice, FCC 10J-1 (rel. Mar. 30, 2010) (“Public Notice”).

I. State Members' Interim Proposal Should Not Apply to Rate-of-Return Carriers

Part I of the State Members' Interim Proposal seeks to address the "cost-revenue mismatch caused by some carriers that have not directly assigned their interstate special access investment during the freeze"² by proposing a one-time adjustment to modify the direct assignment of both Cable and Wire Facilities ("C&WF") and Central Office Equipment "of those carriers who have frozen their plant categories."³ The proposal acknowledges that "some" carriers which were the focus of the analysis in Part I are price cap carriers that were required to freeze their categories and not those rate-of-return carriers that elected to voluntarily freeze their categories.⁴ Although the state members assert that they "believe" the same general conclusions set forth in Part I would apply to rate-of-return carriers with frozen categories and "that under guidance from FCC staff are not directly assigning special access investment,"⁵ no evidence is given to support this belief nor is any data from rate-of-return companies included in their analysis. On the contrary, the state members admit that their analysis "is based primarily on price cap company data available from ARMIS."⁶ Accordingly, if the Federal Communications Commission ("FCC") were to consider adopting Part I of the State Members' Interim Proposal, the proposal should only apply to price cap carriers that were required to freeze separations categories and not to rate-of-return carriers that made a voluntary election to freeze categories for what was believed at the time to be a five-year decision. To apply a proposal which was designed to address problems known to be associated with price cap companies that may not even exist among rate-of-return companies in a manner that utilizes only data from price cap

² State Members' Interim Proposal at 5 (emphasis supplied).

³ *Id.* at 7-8.

⁴ *Id.* at 5 (citing "large price cap carriers" which have ceased applying direct assignment rules to special access facilities).

⁵ *Id.* at 7.

⁶ *Id.*

companies would be arbitrary and capricious and could lead to unintended and negative consequences.

Similarly, if the FCC were to consider adopting Part II of the State Members' Interim Proposal, it should not apply to rate-of-return carriers, with or without frozen categories. In Part II, the state members seek to address, on an interim basis, the fact that separations procedures contain fixed factors "that were set decades ago under far different circumstances" by proposing to create additional subcategories within C&WF category 1.⁷ While taking steps to address out-of-date fixed factors is laudable, such an undertaking involving rate-of-return carriers would need to take place in the context of long-term separations reform and not on an interim basis in the context of extending the freeze. This is especially true for rate-of-return carriers given the intricacies associated with how these carriers qualify for and receive federal universal service support and state and interstate intercarrier compensation revenues. As the Joint Board recognized in its cover letter to the State Members' Interim Proposal, "[f]or those companies and states in which rate-of-return regulation is still applicable, changes in jurisdictional separations rules have a direct effect on end user rates."⁸ Accordingly, before any changes are made to the existing gross allocator used to apportion loop related investment to the interstate jurisdiction, additional analysis must be conducted to determine the financial implications of the proposed adjustments. Similar to Part I, the changes proposed by the state members in Part II appear to be aimed at price cap carriers as no data or analysis relating to rate-of-return carriers is given.

Given the release of Federal Communications Commission's ("FCC's") National Broadband Plan and related rulemaking proceedings on universal service and intercarrier compensation, JSI strongly urges the FCC to not adopt any of the proposals contained in the

⁷ *Id.* at 10-11.

⁸ *Id.* at 3.

State Members' Interim Proposal as the proposals were drafted prior to the release and did not take any of the National Broadband Plan's proposals into consideration. If, however, the FCC were to adopt the State Members' Interim Proposal, the FCC must ensure that its application is limited to price cap carriers that were required to freeze separations factors and categories – the carriers for which the proposal was designed to address. Otherwise, the proposal's adoption could have unintended negative ramifications for rate-of-return carriers.

II. In Considering Permanent Separations Reform, Opportunity Should Be Given to Incumbent LECs to Use Frozen Factors or to Submit Traffic Studies

In its Public Notice, the Joint Board also seeks comment on comprehensive permanent separations reform referred to the Joint Board by the FCC in the *2009 Separations Freeze Extension Order*.⁹ In previous filings regarding proposals for separations reform, JSI has recommended that the FCC adopts a “safe harbor” approach to allow incumbent LECs the option of either using the frozen factors (which would be the “safe harbor” amounts) or submitting traffic studies to NECA or the FCC, which, when approved, could then be used to establish revised, frozen factors for the company.¹⁰ JSI urges the Joint Board and the FCC to consider adopting JSI's proposal as it considers comprehensive permanent separations reform.

III. Conclusion

The State Members' Interim Proposal seeks interim modifications to separations allocation factors and category relationships. Separations allocation factors and category

⁹ *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, 24 FCC Rcd at 6167-69 (*2009 Separations Freeze Extension Order*).

¹⁰ See *Comments of John Staurulakis, Inc.*, CC Docket 80-286, filed August 22, 2006, p. 8 (noting that the FCC has used its “safe harbor” approach in the context of Universal Service contributions to applying the concept to VoIP as well as wireless providers).

relationships are an integral part of the way that incumbent LECs qualify for and receive federal universal service support and state and interstate intercarrier compensation. Accordingly, any adjustments to the factors or category relationships should be considered in light of the FCC's National Broadband Plan which contains the FCC's most recent efforts to reform universal service and intercarrier compensation. Because the State Members' Interim Proposal was drafted and submitted prior to the release of the National Broadband Plan, JSI strongly urges the FCC to not adopt any of its proposals because they did not take any of the National Broadband Plan's proposals into consideration.

If, however, the FCC were to adopt the State Members' Interim Proposal, the FCC must ensure that its application is limited to price cap carriers that were required to freeze separations factors and categories and does not apply to rate-of-return carriers that made a voluntary election to freeze categories for what was believed at the time to be a five-year decision. Otherwise, the proposal's adoption could have unintended negative ramifications for rate-of-return carriers.

In response to the Joint Board's request for comment on comprehensive permanent separations reform, JSI urges that the FCC allow carriers the option of using the frozen factors (which would be the "safe harbor" amounts) or submitting traffic studies to NECA or the FCC, which, when approved, could then be used to establish revised, frozen factors for the carriers choosing that option.

Respectfully submitted,

April 29, 2010

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