



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

In the Matter of)
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)
Jurisdictional Separations Reform) CC Docket No. 80-286
And Referral to the Federal-State)
Joint Board) DA 99-414

Comments of John Staurulakis, Inc.

John Staurulakis, Inc. (JSI), hereby files comments in response to the Federal Communications Commission's (Commission's) *Public Notice*¹ regarding the December 21, 1998 *Report* by the State Members of the Federal State Joint Board (Joint Board) on Separations². JSI is a consulting firm specializing in financial and regulatory services to approximately two hundred incumbent Local Exchange Carriers (ILECs) throughout the United States. JSI assists these ILECs in the preparation and submission of jurisdictional cost studies and Universal Service Fund (USF) data to the National Exchange Carrier Association (NECA), and routinely prepares and files tariffs with the Commission on behalf of a number of these ILECs. In that the proposals and questions raised in the *Public Notice* will affect the jurisdictional cost recovery of its client companies, JSI is an interested party in this proceeding.

The *Public Notice* invites comment on a number of issues, including the *Report's* recommendation that a three-year rolling average for development of separations usage factors be adopted on an interim basis until comprehensive separations reform can be adopted. JSI disagrees with the conclusions of the *Report* that an interim measure is necessary while the Commission undertakes a comprehensive review of jurisdictional separations procedures. JSI opposes the use of a three-year rolling average as recommended in the *Report* as an appropriate "interim" solution to minimize the anomalies currently occurring in the telecommunications industry. In these comments, JSI offers a suitable alternative to the recommended proposal in the *Report*.

The traffic anomalies evident in the jurisdictional separations process are attributable to the increased use of the public switched network for dial-up ISP traffic. JSI acknowledges that the existing separations system is dependent on usage-based measurements. JSI is also aware that the history of cost recovery, separations, and settlements contains examples of the Commission, NARUC-Commission committees, and various Joint Boards tempering the actual use principle with procedures designed to achieve their overall objectives. Such objectives include preventing large jurisdictional shifts of costs and maintaining reasonable local service rates. However, the Commission's recent *Declaratory Ruling*³ addresses the jurisdictional nature of dial-up ISP traffic, establishing it as interstate in nature. The conclusion of the *Declaratory Ruling* is that dial-up ISP traffic be assigned, as best as possible and subject to identification, to the interstate jurisdiction for separations purposes⁴. Any tempering of dial-up ISP traffic will increase pressure on local rates.

The recommended use of a three-year rolling average pre-dates the *Declaratory Ruling* and, as such, does not reflect the declaration that dial-up ISP traffic is to be treated as interstate in nature. Furthermore, this approach has the effect of creating a cost shift toward the local jurisdiction, thereby placing increasing and significant upward pressure on local rates for costs that are associated with interstate telecommunications. Such a result is contrary to the mandate Congress included in the Telecommunications Act of 1996 (Act) that the Commission and States should ensure that universal service is available at rates that are "just, reasonable and affordable."⁵ Moreover, improperly allocating interstate traffic to the intrastate jurisdiction is a violation of the Act wherein local services are prohibited from subsidizing interstate services. (See Section 254(k)).

In the recent *Declaratory Ruling* regarding Inter-Carrier Compensation for ISP-bound traffic as well as the ADSL order regarding

Internet special-access connections, the Commission clearly views Internet traffic as being "mostly" interstate⁶.

The *Report* states that "Internet usage requires a chained communication," and therefore creates fundamental new problems for usage measurement. The *Declaratory Ruling* clarifies the use of end-point communication paths for determining the jurisdictional nature of dial-up ISP traffic. Therefore, the need to identify chained communication segments and the measurement concerns associated with chained communication are moot. While Internet usage incorporates a chained communication path, JSI does not agree that this creates fundamental problems for usage measurement.

JSI believes that the three-year rolling average proposal will not solve the jurisdictional distortion problems associated with dial-up ISP traffic. JSI opposes any type of freeze in allocation factor development for dial-up ISP traffic. Based upon the recent *Declaratory Ruling*, JSI believes that Internet traffic should properly be categorized as interstate and that the *Declaratory Ruling* makes clear that the Commission endorses this position⁷. The inconsistency of recent Traffic Sensitive tariff filings is indicated by the fact that some companies have opted to identify and categorize Internet traffic as interstate, while others are required to identify and categorize the traffic as local⁸. Without consistency in the jurisdiction of special-access and switched access services, the Commission is giving the industry carte blanche ability to implement its own rules.

In the alternative, JSI recognizes that dial-up ISP traffic is currently reflected in separations factors and continues to grow faster than any other component of those factors. Utilizing the three-year rolling average approach will result in the inclusion of ever-increasing levels of Internet traffic, further distorting allocation factors. Absent the adoption of assignment of dial-up ISP traffic to the interstate jurisdiction, JSI proposes, as an interim solution, the extraction of dial-up ISP traffic from the jurisdictional allocation process. With this approach, usage based factors can continue to be developed based on non-Internet traffic, leading to more stable and consistent jurisdictional allocation factors. Exclusion of dial-up ISP traffic from the jurisdictional allocation process would also be consistent with the Commission's Enhanced Service Provider (ESP) exemption. This order recognizes that ESPs, including ISPs, use interstate access services; however, since 1983, the Commission has exempted them from paying certain access charges⁹. JSI suggests the use of the exclusion option would help to alleviate the ever-increasing pressure on local rates.

Respectfully submitted,
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Footnotes

¹ Report Filed by State Members of Joint Board on Jurisdictional Separations, CC Docket No. 80-286, Public Notice, DA 99-414 (Public Notice), February 26, 1999.

² Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket No. 80-286, *State Members' Report on Comprehensive Review of Separations (Report)*, December 21, 1998.

³ *Declaratory Ruling and Notice of Proposed Rulemaking* in FCC CC Docket No. 99-68, February 26, 1999.

⁴ In paragraph 36 of the *Declaratory Ruling*, the FCC states that connections from Enhanced Service Providers (including ISPs) should continue to be procured under intrastate end-user tariffs. This paragraph declares that the costs and revenues of these connections; e.g., basic business lines and public branch exchange (PBX) connections with hunt group features, continue to be accounted for as intrastate revenues and costs. Nothing in this paragraph suggests that dial-up ISP traffic should be assigned to the intrastate jurisdiction.

⁵ 47 U.S.C. Section 254 (b) (1)

⁶ ADSL connections to the Internet have been found to be an interstate special-access service as a result of the Commission's decision in GTOC Tariff Transmittal 1148, Released October 30, 1998. In paragraph of the ruling, the Commission concluded that ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate.

⁷ ADSL connections to the internet has been found to be an interstate special access service as a result of the FCC's decision in GTOC Tariff Transmittal 1148 Released October 30, 1998

⁸ In January 1998, SBC indicated that it planned to allocate 100% of the costs allocated w/ Internet traffic to the interstate jurisdiction...pg 15 of the internet order.

⁹ FCC CC Docket No. 87-215, Order, 3



[Federal Filings Index](#)