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

In the Matter of	)	
	)	
Jurisdictional Separations and	)	CC Docket No. 80-286
Referral to the Federal-State	)	
Joint Board	)	

COMMENTS OF JOHN STAURULAKIS, INC.

John Staurulakis, Inc. ("JSI") hereby files these comments in response to the invitation of the Federal Communications Commission ("FCC" or "Commission") to comment on issues related to the reform of the jurisdictional separations process.[1]

JSI is well-equipped to comment on the issues raised in the NPRM due to its long history in the preparation and submission of jurisdictional cost studies for independent local exchange carriers ("LECs"). JSI's founder, John Staurulakis, served as the director of settlements for the United States Independent Telephone Association until 1962 when he formed JSI . Since that time, JSI has assisted hundreds of LECs throughout the United States in the preparation and submission of jurisdictional cost studies and Universal Service Fund data to the National Exchange Carrier Association ("NECA") in addition to offering regulatory, financial and business development services.

In response to the Commission's request for comment on the initial Glide Path Paper, JSI demonstrated that a continuation of the freeze is by far the best option. After evaluating the more recent Glide Path II, JSI is still convinced that this is the most

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[1] *See Jurisdictional Separations and Referral to the Federal-State Joint Board,* Docket No. 80-286, FCC 06-70, Order and Further Notice of Proposed Rulemaking (rel. May 16, 2006) ("NPRM").

prudent course of action for rate-of-return carriers. As explained herein, JSI believes that the primary concerns raised in these papers can be addressed in a tiered approach whereby the large price cap carriers are granted forbearance from separations rules while the freeze on allocation factors remains in effect for rate-of-return carriers, with a few minor modifications, including addressing an imbalance in the rules pertaining to Dial Equipment Minutes of use ("DEM") factor which allocates Central Office Equipment ("COE") Category 3 costs.

In order to assess JSI's and other commenters' proposals, JSI does not believe that a data request is necessary. If the Commission determines that a data request is required, JSI urges the Commission to limit the request in such a way that it seeks only data that has been generated through the separations process and which can be obtained from resources that already have such information available.

I. Most Proposals in the Glide Path Papers Would be Detrimental to Rate-of-Return LECs

In the NPRM, the FCC requests commenters to refresh the record on the Glide Path Paper and seeks comment on the proposals in the Glide Path II Paper.[2] As JSI demonstrated in its comments on the initial Glide Path Paper, only option one, the proposal to continue the interim freeze on an annual basis, was viable for rate-of-return carriers.[3] As explained more fully below, JSI still maintains that continuation of the freeze is the best option for rate-of-return carriers with minor modifications.

[2] NPRM at para. 30.

[3] *See* Comments of JSI filed on January 22, 2002 in CC Docket No. 80-286 ("JSI's 2002 Comments") at 4.

Regarding the other options in the initial Glide Path Paper, JSI continues to have the following concerns:

- Option Two proposes that all traffic sensitive costs be set pursuant to fixed allocators, which could be set nationally, regionally, or by study area. JSI opposes the adoption of national or regional factors since they would automatically create "winners and losers," and would not be revenue-neutral.
- Option Three proposes to extend the "average schedule" concept to all incumbent LECs. As JSI explained in its comments, this proposal should be rejected for a number of reasons including that it fails to recognize some critical features of the current average schedule regime; it relies heavily on the development and utilization of cost proxy models for calculation of appropriate interstate revenues in the absence of embedded data; and it fails to recognize the impact of jurisdictional demand shifts on the recovery of costs using average schedule or proxy results.[4]
- Option Four proposes that a new settlement mechanism be designed to distinguish packet-switched and circuit-switched services and to recognize the existence of broader categories of regulated services. JSI believes this option to be less effective than making a simple cost study entry and using the current separations rules.
- Option Five proposes to replace the allocation of LEC plant facilities and other investments with the use of relative-use factors and directly assign all plant based on its location in the network. This proposal ignores the needs

[4] JSI's 2002 Comments at 6-9.

and requirements of independent, rural LECs and would effectively be the end of the separations process.

- Option Six would eliminate the separations process which would be in violation of the Supreme Court's ruling in *Smith v. Illinois Bell Tel. Co.* and would be premature given the current evolutionary stage of the rural telecommunications marketplace.
- Option Seven would relieve LECs facing effective competition for all regulated services from cost-based rate regulation in both jurisdictions. This proposal relies on ambiguous parameters and fails to address how "carrier-of-last-resort" obligations would be impacted. As explained below, JSI's proposal to relieve all large price cap carriers of separations requirements would clearly delineate which carriers are relieved of the requirements and which remain under the freeze.

In the Glide Path II Paper, the State Members of the Joint Board ("State Members") updated the initial Glide Path Paper in anticipation of the end of the freeze which was to occur on June 30, 2006.[5] The first two options, allowing the freeze to expire on June 30, 2006 or extending the freeze for a short period of time, are no longer applicable since the FCC has decided to extend the freeze on an interim basis. Options three and four are essentially the same as options two and three in the initial Glide Path Paper and should be rejected for the reasons stated above.

The other two options set forth in the Glide Path II Paper have some merit. In option five, the State Members make the same conclusion that JSI has made in filings

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5 *See* NPRM at Appendix B, "Post-Freeze Options for Separations" at page 2.

before the FCC - that separations reform, intercarrier compensation and other universal service issues must be solved in a comprehensive manner.[6] JSI urges the Separations Joint Board to work with the Universal Service Joint Board and other interest groups as proposed to develop a comprehensive solution. JSI also urges that serious consideration be given to option six in which the State Members seek comment on whether separations reform should be eliminated for a particular market or for a particular carrier.[7] As explained in more detail below, JSI proposes that a specific category - large price cap carriers - be exempted from separations rules.

II. The FCC Should Adopt a Two-Tiered Approach for Separations Reform

To address the primary concerns raised in the Glide Path Papers, JSI proposes that the FCC adopt a two-tiered approach to separations reform. Under this proposal, large price cap carriers (also known as Tier 1 companies) would all be granted the forbearance from imposition of separations rules sought by BellSouth.[8] All other carriers (also known as Tier 2 companies) would remain under the separations freeze.

A. Large Price Cap Carriers Can be Relieved of Separations Requirements

In option number six in the Glide Path II Paper, the State Members note that "[c]ompanies on price cap regimes are obvious candidates to be exempted from separations . . . ."[9] JSI agrees with this assessment and believes that this can be

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6 *See, e.g.,* Comments of JSI filed on May 23, 2005 in CC Docket No. 01-92 at 3-4.

7 NPRM, Appendix B at pages 14-15.

8 *See Petition of BellSouth Telecommunications, Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 05-342, Petition for Forbearance (filed Dec. 6, 2005) ("BellSouth's Petition").

9 NPRM, Appendix B at page 14.

accomplished if the FCC were to grant BellSouth's forbearance petition and make it applicable to other similarly-situated large price cap carriers. In its forbearance petition, BellSouth demonstrates that under price cap regulation, the FCC's separations rules "have no usefulness" for ensuring the just and reasonableness of rates or for protecting customers.[10] As explained by BellSouth, under rate-of-return regulation, "a LEC's costs, and specifically the results of cost assignment rules, are a critical input that has a direct and meaningful impact on the rates that customers pay" whereas "the inputs into the price cap process are governed by economic factors such as productivity and demand."[11] Grant of the petition for BellSouth and making it applicable to all large price cap carriers would be in conformity with the statutory requirement that the Commission forbear from enforcing regulations that are not necessary and that forbearance be granted when it is in the public interest.[12]

B. Rate-of-Return Carriers Should Remain Under the Freeze

As the FCC has previously recognized, the freeze provides "stability and regulatory certainty for carriers and reduce[s] regulatory burdens on carriers during the transition from a regulated monopoly to a deregulated, competitive environment in the local telecommunications marketplace."[13] Accordingly, to ensure "stability and

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10 BellSouth's Petition at 10 & fol.

11 *Id.* at 20.

12 *See* 47 U.S.C. § 160(a).

13 NPRM at para. 8.

regulatory certainty" for small and mid-size rate-of-return LECs, it would not be appropriate to abolish separations or make radical changes for these carriers.[14]

III. Slight Modifications Should be Made For Carriers that Remain Under the Freeze

JSI has observed some instances when carriers have been unnecessarily penalized due to the application of a particular separations rule. Accordingly, JSI recommends the following changes be made to the rules for the rate-of-return carriers which will remain under the freeze:

A. Cost Companies Should be Allowed to Convert to Average Schedule in an Expedited Process

FCC rules allow a LEC to convert from an average schedule company to a cost company, but a LEC "must obtain a waiver of the definition of 'average schedule company' in section 69.605(c) to change from a cost company to an average schedule company."[15] JSI proposes that to provide for more efficient use of Commission resources and to expedite the waiver process, companies be allowed a one-time window of opportunity to file a waiver petition seeking to convert from cost to the interstate average schedules and have their petitions acted upon in a short timeframe (*e.g.* 90 days).[16] Once

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[14] In recognition that some small and mid-size rate-of-return LECs facing competition may find it necessary to seek relief from the separations rules, JSI proposes that the Commission establish a 90 day "deemed granted" process by which these carriers may seek such relief.

[15] Sully Telephone Association, Inc. and Reasnor Telephone Company, LLC Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules; Petition for Waiver of Section 69.605(c) of the Commission's Rules Regarding the Definition of "Average Schedule Company" Order CC Docket No. 96-45 DA 05-3106 (rel. November 29, 2005) at footnote 31 citing 47 C.F.R. §69.605(c).

[16] *See* MTS *and WATS Market Structure: Average Schedule Companies*, CC Docket No. 78-72, Phase I, FCC 86-411, Memorandum Opinion and Order, 3 FCC Rcd 834 (1986) at para. 2 citing *MTS and WATS Market Structure: Average Schedule Companies*, CC Docket No. 78-72, Phase I, FCC 86-177, Report and Order, 103 FCC 2d 1017 (1986) ("R&O") at para. 2 ("Average schedules have long been available for the convenience of exchange carriers 'that have been assumed, because of their small size, not

a company converts to the average schedules, it would not be able to return to cost for at least a three year period.

B. The "Safe Harbor" Concept Should be Applied to Separations

The Commission has recently expanded the use of its "safe harbor" approach in the context of Universal Service contributions to applying the concept to VoIP as well as wireless providers.[17] JSI believes that this concept should also be applied in the context of separations reform. This would allow companies 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 company.

C. Inequities Must be Addressed in the DEM

JSI has made several *ex parte* presentations in which it has explained the need to address an imbalance in the FCC's rule pertaining to the DEM factor.[18] This factor allocates COE Category 3 costs to the applicable settlement jurisdiction. For small companies, those less than 50,000 access lines in service, the factor is weighted. There are several thresholds in the weighting depending on lines served. For example, the smallest companies, those less than 10,000 access lines served, receive a weighting factor of 3.0. Companies with 10,001 to 20,000 access lines served receive a factor of 2.5, and

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to have sufficient financial resources or expertise to justify a requirement that they perform jurisdictionally separated cost studies for determining their compensation in originating and terminating interstate telecommunications services'"); R&O at para. 5 ("we also required in section 69.605(c) of our rules that: (1) affiliated exchange carriers settle either on a cost basis for all companies or on an average schedule basis for all companies (*i.e.,* a company cannot elect average schedule status if it is affiliated with a cost company . . .").

[17] *See Universal Service Contribution Methodology*, WC Docket Nos. 06-122 and 04-36; CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116 and 98-170, Report and Order and Notice of Proposed Rulemaking, FCC 06-94 (rel. Jun. 27, 2006) at paras. 9, 32, 53-57.

[18] *See, e.g,* Letter from Douglas Meredith, Director – Economics & Policy, JSI, to Marlene H. Dortch, Secretary, FCC, *Ex Parte* Presentation in CC Docket No. 80-286, dated Mar. 30, 2006.

companies with 20,001 to 50,000 access lines served receive a factor of 2.0. The rule requires that a study area in which access lines increase over a weighting factor threshold move to a lower DEM weighting factor for the remainder of the current freeze period. However, if a LEC study area realizes a decrease in access lines to a level below a DEM weighting factor threshold, the current FCC rule is silent on allowing the LEC to move to a higher weighting factor. As a result of this imbalance in the rules, rural LECs that have dropped below a DEM weighting factor threshold due to a decline in line counts have been penalized by not receiving the appropriate amount of settlements to which they are entitled.

Due to increased use of broadband and intermodal competition, some LECs may experience a decrease in access lines dropping them below a DEM weighting factor threshold. As demonstrated in our ex parte presentations, these LECs have been penalized by the application of this rule.[19] JSI anticipates that many more companies will also be negatively affected as access lines decrease. To address the imbalance, JSI urges the FCC to rule that the change in DEM weighting apply to both increases and decreases in access lines when access lines cross a DEM weighting factor threshold.

IV. At the Very Least, the Draft Data Request Should be Streamlined

The FCC also seeks comment on a draft data request that was developed by the State Members in order to "better assess" the impact of the separations freeze on companies. JSI believes that requesting such data from companies is unnecessary and

[19] *See* Letter from Douglas Meredith, Director – Economics & Policy, JSI, to Marlene H. Dortch, Secretary, FCC, *Ex Parte* Presentation in CC Docket No. 80-286, dated Apr. 26, 2006 (predicting that at the time of filing the letter, there were approximately 18 LECs that have been impacted by the absence of an adjustment for line decreases and providing case studies to assess the financial impact of not allowing a DEM weighting factor threshold adjustment for decreases in study area lines).

burdensome. If the Commission determines that a data request is required, JSI urges the Commission to limit the request to seek only data that has been generated through the separations process and that the data be obtained from resources such as NECA that already have such information available.[20] Questions that seek opinions or are speculative in nature should also be eliminated.[21]

V. Conclusion

JSI's two-tiered approach addresses the primary concerns set forth in the Glide Path papers by granting large price cap carriers relief from separations rules while continuing to provide the necessary regulatory certainty for rate-of-return carriers as they transition to a more competitive environment. Additionally, the approach recommends a few minor adjustments to the rules to eliminate instances in which carriers have been unnecessarily penalized due to the application of a particular separations rule. Accordingly, adoption of JSI's proposal would strike the appropriate balance sought by the State Members in the Glide Path papers and by the Commission in its NPRM.

Respectfully submitted,

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[20] As the Commission recognized in its NPRM, "LECs already retain most of the requested information pursuant to Parts 32, 36, 64, and 69 of the Commission's Rules." NPRM at para. 32.

[21] For example, the draft data request asks such questions as "If there had been no separations freeze, would Internet usage have increased your local exchange costs more than has actually occurred?" NPRM, Appendix C, Section I, Question 6.