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

In the Matter Of

Glide Path Policy Paper filed by State Members or the Federal-State Joint Board on Jurisdictional Separations	CC Docket No. 80-286

COMMENTS OF JOHN STAURULAKIS, INC.

COMES NOW John Staurulakis, Inc. (JSI) before the Federal Communications Commission (FCC or Commission) to file comments in response to a request for comments by the Common Carrier Bureau on the "glide path" policy paper filed by state members of the Federal-State Joint Board on Jurisdictional Separation.[1]

JSI is a consulting firm specializing in regulatory and financial services to more than two hundred rate-of-return incumbent local exchange carriers (ILECs) throughout the United States. Among its consulting services, 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. JSI also provides consulting services for competitive local exchange carriers (CLECs) that provide competitive local exchange services across the nation. Since the Commission seeks comments on various reform options for jurisdictional separations, and these options have the potential to drastically alter the current jurisdictional separations mechanism, JSI is an interested party in this proceeding.

[1] Common Carrier Bureau, Federal Communications Commission, Common Carrier Bureau Seeks Comment On "Glide Path" Policy Paper Filed By State Members Of The Federal-State Joint Board On Jurisdictional Separations, DA 01-2973, December 20, 2001.

I. INTRODUCTION

As discussed in the FCC's Public Notice, the glide path paper proposes various options for a transition path from the current frozen Part 36 regime to a future mechanism. The motivation for these options is the need to recognize that the telecommunications environment will continue to witness significant technological, economic, and legal changes. The glide path paper poses several questions, including "whether separations can be abolished altogether, or if separations is to remain, what changes should be made to the process; and what methods can be used to transition to a new separations system, without creating unwanted consequences."

In addition to the questions addressed in the paper, the glide path proposal outlines several goals for comprehensive separations reform, including the principles that "separations should be simpler, separations should be compatible with new technologies and competitive markets, and cost responsibilities should follow jurisdictional responsibilities."

II. Options

The glide path paper offers seven (7) options for comprehensive separations reform. The following summarizes each option directly from the Public Notice.

> Option 1: Extend the Freeze.
> This option proposes to continue the interim freeze of the Part 36 category relationships and jurisdictional allocation factors on an annual basis.
>
> Option 2: Separate Traffic-Sensitive Costs with Fixed Allocators.
> Currently, non-traffic-sensitive (NTS) loop costs are separated using a fixed allocator that assigns 25 percent of the loop costs to the interstate jurisdiction. Traffic sensitive (TS) costs, however, are allocated to the jurisdictions based on relative-usage factors, such as Dial Equipment Minutes (DEM) and Subscriber Line Units (SLU). This option proposes that all TS costs be set pursuant to fixed allocators. The fixed allocators could be set nationally, regionally, or by study area.
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> Option 3: Total Company Revenue Requirement.
> This option proposes to extend the "average-schedule" concept used by some small carriers to all incumbent carriers. Under this proposal, carriers would neither report costs nor perform traditional cost studies. Rather, ILECs would develop their interstate revenue requirements based on a formula or model similar to the average-schedule process. States would set their intrastate rates so that a carrier's unseparated revenues, including interstate, meet its revenue requirement for regulated services.

Option 4: Redesign the Separations Process to Account for Packet Switching and Competition.
This option attempts to account for two major developments in the telecommunications industry: (1) the growth of packet-based networks; and, (2) the increasing number of unregulated "competitive" services being offered by ILECs. This option proposes that a new separations mechanism be designed to distinguish packet-switched and circuit-switched services and to recognize the existence of broader categories of unregulated services.

Option 5: Facilities-Based Separations.
This option proposes to simplify the separations process by directly assigning telecommunications equipment to either the state or federal jurisdiction, based on the location of that equipment in the network. A point of demarcation between the state and federal jurisdictions; *e.g.,* the tandem point, would be selected, and all facilities on each side of that point, and their respective costs, would be assigned to the state or federal jurisdiction. This proposal would have effects on rate design and universal service, and the glide path paper discusses these effects in detail.

Option 6: End Separations.
This option contemplates the complete elimination of the federal-state jurisdictional separations process and identifies two scenarios under which separations could be abolished:

(1) One State Jurisdiction.
Pricing policy would be assigned to the states, subject to general FCC guidelines for all relevant areas. Carriers would no longer file tariffs, but the Commission might impose limits for certain rates for which there is a national interest. National programs, such as the universal service support mechanism and local number portability, would remain under the federal jurisdiction.

(2) One Federal Jurisdiction.
All pricing policy would be assigned to the FCC, which would have the responsibility to set all retail rates for services currently subject to separations.

Option 7: Competition Overtakes Regulation.
Under this proposal, the Commission would relieve ILECs facing effective competition for all regulated services from cost-based rate regulation in both jurisdictions.

JSI provides the following comments, concerns, and recommendations on the seven options posed in the glide path paper. JSI believes that the glide path paper fulfils its initial goal to "stimulate debate" about the future role of jurisdictional separations in the regulated telecommunications marketplace. However, JSI also believes that the vetting of these multifaceted and complex jurisdictional issues will take more time for discussion and evaluation than is provided in the relatively short comment and reply cycle for the glide path policy paper.

JSI recommends that the Commission maintain the current freeze that is still in its infancy. The Commission should also review and monitor recent reforms that will unquestionably affect jurisdictional separations. JSI also recommends that requests for comment on any future Joint Board recommendation regarding this matter provide for an extended comment cycle, similar to the request for comments regarding the policy papers on the unified intercarrier compensation proposal addressed last year. Finally, JSI recommends that certain options mentioned in the glide path paper be rejected as neither in the public interest nor in the interest of the self-stated goals of simplification and compatibility with jurisdictional responsibilities.

III. Option 1: Extend the Freeze

A. Option Summary

This option proposes to continue the interim freeze of the Part 36 category relationships and jurisdictional allocation factors on an annual basis.

B. JSI Evaluation

JSI recommends that the FCC reaffirm its prior decision and maintain this option, which is effectively the status quo. Because the industry is in the first year of a five-year freeze, JSI recommends this option and suggests that the Commission was prudent in its prior decision because its allows sufficient time for evaluation of the various issues surrounding the separations factor freeze.

As JSI stated in its previous comments regarding separations reform,[2] "the primary objective for implementation of a five-year freeze of all allocation factors according to the Joint Board is to 'provide much needed simplification and stability to the separations process in a time of rapid market and technology changes.' As the Commission and the rest of the telecommunications industry have already recognized, one of the primary reasons for the instability in the current jurisdictional allocation process is the impact that Internet usage is having on interstate allocation factors." As a practical matter, the freeze of some category relationships and all allocations factors has been in effect for little more than six months, and separations studies for this period have yet to be completed. JSI believes it was a goal of the Commission and the Joint Board to use the freeze period to evaluate its effectiveness on industry stability. Before JSI can comment on any extension of the current freeze, we feel that the industry needs time to assess the impact that the freeze will have on revenue requirements, both interstate and intrastate. This recommendation is consistent with the glide path paper that recognizes the symbiosis between interstate and intrastate costs facing ILEC end-user customers.

[2] CC Docket 80-286, DA 00-1865.

Further, with the recent implementation of the MAG Order[3] that will spawn additional industry changes through July 1, 2003, JSI believes it is prudent for the industry to use the current freeze period to evaluate the effects of these monumental changes. JSI suggests that to add an additional layer of unfamiliarity upon an already shifting system of rules and regulation without adequate review would not be a prudent course of action and likely increase the uncertainty resulting from current access reform changes.

Perhaps more important than the federal changes emanating from the MAG Order will be the manifold changes that will be initiated at the state level for intrastate access. In the wake of the MAG Order, JSI believes that additional changes are likely at the state level that will affect jurisdictional separations and end-user charges. Perhaps the state Joint Board members' motivation for the glide path proposal was in fact their realization that state regulation will have a significant impact on end-user charges and intrastate access rates. Clearly, all parties agree that end users do not recognize the difference between federal and state monthly charges on their bills. Hence, interstate access reform puts state access reform on-deck, awaiting its turn at bat.

In making the recommendation for further evaluation of the current freeze, JSI recognizes that the freeze will eliminate the need to report the results from certain basic studies and traffic switch studies. In cases where these studies are used solely for jurisdictional separations, a continuation of the freeze will reduce the burden of performing additional studies – a worthwhile benefit of this option. However, JSI voices concern that there is a possibility at some point during its deliberations, the Commission may require the calculation of new factors to test and evaluate the direction of separations beyond the freeze period. Requiring additional studies in the future would require ILECs to restart the study process, which undoubtedly would place additional burdens on their resources and staff. Nonetheless, JSI believes that these additional burdens do not outweigh the benefits derived from maintaining the current freeze.

IV. Option 2: Separate Traffic-Sensitive Costs with Fixed Allocators

A. Option Summary

Currently, NTS loop costs are separated using a fixed allocator, which assigns 25 percent of the costs to the interstate jurisdiction. TS costs, however, are allocated to the jurisdictions based on relative-usage factors – DEM and SLU. This option proposes that all TS costs be set pursuant to fixed allocators, which could be set nationally, regionally, or by study area.

[3] Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 01-304 (rel. Nov. 8, 2001).

B. JSI Evaluation

JSI believes this option is nothing more than the generalization of Option 1, allowing frozen allocators to be set by study area. JSI supports the adoptions of fixed allocators if they are to be set by study area. However, at this time, JSI is opposed to the adoption of national or regional factors, without proper study and evaluation of the proposed factors. The use of national or regional factors would automatically create "winners and losers," not be revenue-neutral, and in general cause more harm than good.

A good example of establishing a national factor is the creation of the gross allocator for the apportionment of common-line costs to the interstate jurisdiction. This process began in 1984 and was transitioned over an eight-year period while being carefully monitored by both the FCC and NECA. Experience suggests that establishing any fixed allocator on a regional and/or national basis would be a protracted process, a prospect not in the best interest of the industry. Therefore, JSI recommends that the FCC reject this option; in the alternative, JSI recommends that the Commission rely on study-area factors only and reject regional and national factors.

Furthermore, JSI notes that for small and rural ILECs, the current frozen weighted DEM rules already apply to a significant portion of an ILEC's local switching costs. Since this option does not recognize the current frozen DEM factor rules, the importance of this option is greatly minimized for rural ILECs with less than 50,000 access lines.

V. Option 3: Total Company Revenue Requirement

A. Option Summary

This option proposes to extend the "average-schedule" concept used by some small carriers to all incumbent carriers. Under this proposal, carriers would not report costs or perform traditional cost studies. Rather, ILECs would develop their interstate revenue requirements based on a formula or model similar to the average-schedule process. States would set their intrastate rates so that a carrier's unseparated revenues, including interstate, meet its revenue requirement for regulated services.

B. JSI Evaluation

In Option 3, the glide path describes an environment in which all interstate revenues are calculated based on a non-embedded cost mechanism. These costs could be calculated based on a proxy model approach, presumably with some form of forward-looking economic cost methodology. The use of the proxy model approach would be needed due to the lack of actual cost data reported to the FCC. The distribution of settlements would be set up similar to today's average schedule format, in which values are determined for a particular demand input; *i.e.*, access lines in service, interstate access minutes of use, etc. This arrangement would eliminate the need for a separations process between the state and interstate jurisdictions. The interstate revenues would be taken into account in any state ratemaking proceedings as a reduction of the total company revenue requirement, with state ratepayers, both end-user and access customers, making up the residual allowed revenues. The purported advantages to this approach include: the "simplification" involved with eliminating separations, and presumably all FCC cost reporting; the fact that the average-schedule approach is fairly well understood by the industry; and the ability of state ratepayers potentially to receive benefits from increases in interstate revenues. The disadvantages include the problems associated with creating a usable cost model and the potential negative impact on state ratepayers associated with decreases in interstate revenues.

In offering this option, the authors attempt to draw parallels to the existing average-schedule environment. This serves to depict this option as closely akin to a current settlement system in use today by many ILECs, which could serve to lessen expected resistance to this proposal. However, Option 3 fails to recognize some critical features of the current regime. It also relies heavily on the development and utilization of cost proxy models for the calculation of appropriate interstate revenues, in the absence of embedded data. JSI does not believe that this path can be laid out until such time as this model is developed and reviewed, in particular for rural ILECs. Furthermore, the proposal fails to recognize the impact of jurisdictional demand shifts on the recovery of costs using average schedules or proxy results. These shifts in demand can produce significant changes for cost recovery, such as those being realized with the advent of dial-up Internet access. Finally, while the authors extol the simplicity netted from the elimination of separations studies, they fail to mention what additional or corresponding requirements would be required to ensure cost recovery from the state jurisdiction.

The authors refer to companies using today's average schedules as doing so due to "their size and limited resources," presumably meaning that they cannot afford the costs associated with the process of conducting annual separations studies. There are no doubt a large number of ILECs that rely on the average schedules for this reason. JSI would opine, however, that a more basic reason that ILECs continue on the average schedules is to achieve a higher level of settlements than would be allowed in a cost environment, and as a result, achieve a rate of return above the federally authorized 11.25 percent.

An examination of the data provided by the Universal Service Administrative Company (USAC) in its First Quarter 2002 filing with the FCC reveals there are currently 528 ILECs classified as average schedule (Attachment HC-1). Of these 528 companies, 49 are over the 10,000-access-line level (including 11 study areas between 30,000 and 100,000 lines, and 2 over 100,000 lines), with an additional 72 having between 5,000 and 9,999 access lines. Based on a comparison with the list of cost companies, it would appear that many companies of similar size find that the requirements associated with being "on cost" are not overly burdensome. In the long term – one-year cost fluctuations aside – any ILEC failing to achieve at least an 11.25 percent rate of return would use its option to convert to cost-based settlements, which guarantee that level. As a result, it seems fair to say that the majority of companies remaining on average schedules do so because they are achieving returns greater than 11.25 percent. This situation can be justified by the belief that since these ILECs can provide interstate access services at a cost below the "average," they should be able to reap the resulting benefits via increased returns.

It is certainly true that several states currently conduct ratemaking based on the general process described in Option 3, especially in the case of ILECs classified as average-schedule companies for interstate purposes. Indeed, given that there are no separations factors available for these companies, there is little choice in the matter. Given the above description, state commissions would generally be happy to have as many average-schedule companies as possible within their borders, given the likely contribution of revenues that can be used to offset intrastate rates and to keep local service rates at politically acceptable levels.

JSI is concerned that any movement to transition all ILECs to an average-schedule type arrangement may create an entirely new set of "winners and losers." Their varying cost structures would presumably place ILECs in a position relative to an "average" cost of providing service, with those providing service below the average deriving greater benefits either in terms of returns or lower local rates, and the opposite situation afflicting those with higher cost structures. It should be noted that almost exclusively, a company's cost structure is based on factors, such as density, geography, and terrain, beyond the control of an independent ILEC.

In today's environment, NECA uses the cost data submitted by cost companies as a surrogate to develop the payments for average-schedule companies. Under the proposed option, this would no longer take place. Rather, a cost model would be employed, or alternatively, current rates/settlements would basically be frozen and growth or decline in revenues set by some change in underlying demand, a system which is somewhat analogous to the current price-cap mechanism. Regarding the use of cost models, once embedded data is no longer supplied, it is apparent that a proxy model would need to be employed. Both the FCC and the Rural Task Force in its Recommended Decision on Universal Service (subsequently adopted by the FCC) rejected the use of cost proxy models at the current time for the development of universal service payments for rural ILECs. The use of forward-looking economic cost models in the development of UNE pricing is still being reviewed by the federal courts and may ultimately be decided by the U.S. Supreme Court. Given this degree of uncertainty, we strongly recommend that the FCC reject the proposal to use proxy models in the development of interstate revenues, and based on the problems described herein, JSI recommends that the Commission not consider Option 3 at this time.

With regards to the possibility of basically freezing today's settlements, with a marginal adjustment, JSI observes that this proposal sounds very similar to the incentive regulation proposal in the MAG plan. Similar to the use of proxy models for USF, the FCC already has summarily rejected this incentive regulation proposal as unacceptable, and JSI believes that would continue to be the case in this instance.

JSI notes that a primary goal of Option 3 is to promote simplicity for all participants in the industry. Yet in order to achieve this simplicity, the plan creates a new cost proxy model – and, potentially multiple models – that would be used for rural ILECs. There are a host of questions associated with how this model could be developed and implemented that do not at present have answers. Yet, we hear this is a "simpler" approach. The plan advocates the elimination of separations studies, since all pricing would either be fixed (interstate) or decided by the state commissions. Thus, in order for an ILEC to ensure sufficient cost recovery, it may be forced to undergo a general rate case on a routine basis, which is by no means a simpler process than the Part 36 studies that have become routine for most ILECs over the years. Indeed, for most rural ILECs, the cost necessary for completing theses studies is far less than the burden to comply with an annual audit that may be likely under the plan. Many states have adopted alternative regulation plans, which may have eliminated rate-of-return regulation. These plans, some of which were developed by state regulators and some of which were mandated by statute, would have to be modified or scrapped altogether to accommodate the elimination of jurisdictional distinctions and to provide an opportunity for ILECs to recover residual costs not provided for in the new pseudo-average-schedule framework. It is apparent that this process would not lead to much in the way of simplicity. Based on all these reasons, JSI recommends that the Commission reject Option 3.

VI. OPTION 4: Redesign the Separations Process to Account for Packet Switching and Competition

A. Option Summary

This option attempts to account for two major developments in the telecommunications industry: (1) the growth of packet-based networks; and, (2) the increasing number of unregulated "competitive" services being offered by ILECs. This option proposes that a new separations mechanism be designed to distinguish packet-switched and circuit-switched services and to recognize the existence of broader categories of unregulated services.

B. JSI Evaluation

JSI disagrees with the glide path statements that portray the ATM unit as providing predominantly non-regulated services. In fact, it has been JSI's experience that an ATM unit is most often being used for the provision of regulated services, such as DSL and other high-speed data applications. With that in mind, we offer the following recommendation in response to Option 4.

From a non-technical point of view, ATM networks may be compared to fiber-optic networks in that an ATM unit functions in much the same way as fiber-optic terminals, digital cross-connect units, and multiplexers. All of the latter units are classified as transmission equipment, and the non-regulated services offered over those facilities are handled quite routinely through the current separations process. For example, a simple reclassification of ATM from Account 2212 to Account 2232 in the cost study process is all that is necessary to accommodate the multiple uses of the ATM.[4] In reality, an ATM unit switches nothing. It routes, multiplexes, and integrates protocol conversion (formats) information for the

[4] The Commission's Accounting Reform Order, provides for a sub-account under 2212 that effectively addresses this issue. 2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 Amendments to the Uniform System of Accounts for Interconnection Jurisdictional Separations Reform and Referral to the Federal-State Joint Board Local Competition and Broadband Reporting, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286 Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, and 80-286, FCC 01-305 (rel. Nov. 5, 2001).

transmission path, much like fiber-optic equipment that routes, multiplexes, and formats lightwaves for the transmission path. Again, current separations rules accommodate the ATM network quite matter of factly if viewed in this light.

If however, there is a reluctance to reclassify the ATM from switching to transmission, a change in the separations rules would become necessary. A separate ATM allocation factor would need to be developed based on switch use. In the separations process, ILECs already have Continuing Property Records (CPR) in place to identify each company asset by property unit, with costing and separations information included. Currently, the ATM unit is listed distinctly from other units and costs, and a separations category (Category 3) identifies that unit as ATM that uses a DEM factor for jurisdictional allocation. Separations rules would have to be revised to provide an ATM category (rather than Category 3) and develop a new ATM allocation factor (rather than DEM). Such a factor would allocate the unit based on all services provided by the unit. JSI believes Option 4 to be less effective than making a simple cost study entry and using the current separations rules.

VII. Option 5: Facilities-Based Separations

A. Option Summary

This option proposes to simplify the separations process by directly assigning telecommunications equipment to either the state or federal jurisdiction, based on the location of that equipment in the network. A point of demarcation between the state and federal jurisdictions; *e.g.*, the tandem point, would be selected, and all facilities on each side of that point, and their respective costs, would be assigned to the state or federal jurisdiction. This proposal would have effects on rate design and universal service, and the glide path paper discusses these effects in detail.

B. JSI Evaluation

In Option 5, the glide path paper proposes to replace the allocation of ILEC plant facilities and other investments with the use of relative-use factors (traffic factors) and directly assign all plant based on its location in the network. The paper proposes that all plant located between the trunk ports connecting a LATA tandem and the end-user's premises be assigned to the state jurisdiction, and likewise, investment from the tandem ports to the IXC's POP be assigned to the interstate jurisdiction.

For the reasons set forth below, JSI recommends that the FCC reject this proposal. JSI believes that this option was not drafted with the needs and requirements of independent, rural ILECs in mind – indeed, it basically ignores their very situation. In the case of rural ILECs, the adoption of Option 5 would result in the end of the separations process completely, with the exception of some investment and expenses that, we believe, were treated incorrectly by the authors. As indicated below in our discussion of Option 6, we do not believe that the elimination of the separations process is at this time prudent or necessary, particularly as it relates to rural ILECs.

In the second paragraph of Option 5, the authors write: "A tandem service area is never smaller than a LATA." This statement appears to convey a misunderstanding of the composition of today's network. Many LATAs include multiple access tandem offices, some of which are owned by independent ILECs. These tandem switches that in most cases "subtend" off an RBOC tandem have all of the functionality of the RBOC "LATA" tandem. Indeed, with the adoption of the Local Transport Restructure Order,[5] IXCs are required to connect to these tandems with dedicated facilities. In addition, IXCs have the option to order direct facilities to stand-alone Class 5 end offices located in an independent's territory. Many IXCs have ordered these direct trunks as the most efficient means of transporting their traffic from the end office to the access tandem, and ultimately to their POP. Similarly, IXCs may locate their POP in an ILEC's serving area through the purchase of the entrance facilities rate element. These scenarios are all examples of IXC-leased facilities, located "behind" the LATA tandem that Option 6 would classify as state investment. This is in contrast to the same type of facilities that are located "in front" of the tandem (located in RBOC areas) that would be classified as interstate. We do not believe this division is equitable for independent ILECs.

If one assumes that the authors truly meant to propose that only investment located "in front" of a LATA tandem (almost exclusively owned by the RBOCs) should be assigned to the interstate jurisdiction, the result would be that 100 percent of an independent ILEC's central office equipment and cable and wire facilities would be categorized as intrastate. By a quirk of this option, 25 percent of general support facilities would be assigned to interstate. As a result, these support facilities and the pro-rated expenses would be the only component of the independent ILEC's rate base assigned to the interstate jurisdiction, a scenario which on the surface does not seem to be the intent of the authors.

Based on these apparent errors, as well as the issues raised in Option 6, JSI recommends that the FCC reject this proposal.

VIII. Option 6: End Separations – One Jurisdiction

A. Option Summary

This option contemplates the complete elimination of the federal-state jurisdictional separations process and identifies two scenarios under which separations could be abolished:
(1) One state jurisdiction. Pricing policy would be assigned to the states, subject to general FCC guidelines for all relevant areas. Carriers would no longer file tariffs, but the Commission might impose limits for certain rates for which there is a national interest. National programs, such as the universal service support mechanism and local number portability, would remain under the federal jurisdiction.
(2) one federal jurisdiction. All pricing policy would be assigned to the FCC, which would have the responsibility to set all retail rates for services currently subject to separations.

[5] Local Exchange Carrier Switched Local Transport Restructure Tariffs, 9 FCC Rcd 400, 1993 (rel. Dec. 29, 1993).

B. JSI Evaluation

The very first sentence of the glide path's background section: "Maturing competition may replace regulation and make jurisdictional separations unnecessary, at least in some markets." Despite the assumption that jurisdictional separations may be unnecessary, there is no evidence to suggest that competition can replace regulation for all rural ILECs. In fact, the Telecommunications Act itself foresees a continual need for rural ILECs. Small rural companies are dependent on the interstate revenues generated by the separations process. For a great many ILECs, a significant amount of their regulated revenues are derived from interstate settlements. To eliminate this process arbitrarily in the name of competition seems unwarranted at the current evolutionary stage of the rural telecommunications marketplace.

JSI believes that the glide path paper makes a critical error in its failure to address the opinion of the court in *Smith v. Illinois Bell Tel. Co.*, which "requires that some form of separations continue."[6] There is no doubt that the industry has seen phenomenal changes since 1930. However, absent a reversal of the opinion in *Smith*, Option 6 has failed to present a viable solution. The facts remain as they did in 1930: End user customers still make both intrastate and interstate calls, and *Smith* requires that the cost of those calls be assigned to the proper jurisdiction and that the appropriate governmental agency maintain authority for the rates charged and the revenues generated. For either the state or federal commission to arbitrarily abdicate its authority solely for the sake of "simplicity" appears to contradict the court's opinion.

A. One State Jurisdiction

As defined, this proposal would transfer tremendous responsibility to the state. Pricing policy, wholesale and retail, consumer protection functions, retail and wholesale tariffs, interconnection agreements, as well as all end-user rates all would become responsibilities of the state. This alone would create, at a minimum, a significant staffing problem. For some states, which have relinquished regulatory responsibility for small commercial and/or cooperative LECs, new regulatory rules and/or legislation would have to be changed or enacted. In addition to the inherent problems and confusion this would cause, it appears that there would still be some type of FCC oversight. The extent of this oversight is undetermined and merely increases the regulatory uncertainty that the glide path intends to remove.

B. One Federal Jurisdiction

Transferring regulatory responsibilities from the state to the federal jurisdiction presents two major problems. The first is simply distance: Policy makers in Washington D.C. simply are not physically close enough to local ratepayers and service providers to have a true sense and understanding of individual "local markets." Beyond the geography, the other issue is that any such transfer of power would create real constitutional issues to be resolved and likely lead to prolonged appeals and court review. Again, the final outcome of any attempt to shift such a massive framework of responsibilities is unknown. In the unlikely event that such a proposal were to come to fruition, one could argue that local

[6] Smith v. Illinois Bell Telephone Company, 282 U.S. 133 (1930).

ratepayers would not be as well represented and, in turn, the public interest would not be well served due to the lack of commonality and understanding of the federal government with respect to local and state-specific telecommunications issues.

IX. Option 7: Competition Overtakes Regulation

A. Option Summary

Under this proposal, the FCC would relieve ILECs facing effective competition for all regulated services from cost-based rate regulation in both jurisdictions.

B. JSI Evaluation

At present, Option 7 is undefined because the parameters that would establish this relief are ambiguous. If the FCC were interested in assessing this option, it would need to set specific criteria, which JSI believes would be very difficult to implement on a consistent basis. Each serving area, whether rural or urban, contains unique circumstances that would need to be taken into consideration when making this determination. For instance, if a company is receiving sufficient competition in a specific exchange and deregulation could possibly be warranted, how would this affect the company's other exchanges that are essentially unaffected by competition? Would a methodology be developed to address a situation such as this, or would selection for an exemption from rate regulation be an all-or-nothing option? Such questions have all the makings of a logistical nightmare. Making these types of decisions will be extremely controversial, require enormous time and energy, and ultimately will not be in the best interest of consumers.

Another consideration in an unregulated environment goes to "carrier of last resort" obligations. Would this responsibility be eliminated? If so would High Cost Loop Support be abolished as well? This obviously would not bode well for ILECs with the significant level of embedded plant they have invested to reach the end user.

Rate regulation provides a certain level of stability as well as protection for consumers. It enables governing bodies to establish criteria in some areas of pricing and to ensure certain levels of service quality. The concept and spirit of universal service could potentially be jeopardized in an unregulated environment. The absence of regulation, at either the state or federal level, would severely hamper the functionality of the industry and ultimately punish the consumer it is trying to accommodate.

The elimination of separations without addressing these issues would create turmoil in an industry currently embroiled in digesting a number of recent orders. The separations process itself has provided continuity in an unstable environment. It also has encouraged investment in technology, which is responsible for new and improved services. Under the current conditions, it appears it would be prudent to wait and see the impact of such developments as the MAG Order and USF disaggregation have on rural ILECs and the rest of the industry before undertaking additional significant changes that could adversely affect providers and consumers alike.

X. Summary

In summary, JSI recommends that the FCC reject many of the options discussed in the glide path proposal and continue with the current jurisdictional separations freeze. In light of the various options presented in the paper, JSI recommends that the Commission maintain and reaffirm the use of the existing separations factor freeze and evaluate the effects of recent industry reforms on the jurisdictional separations process.

Respectfully submitted,

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