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May 16, 1996

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Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D. C. 20554

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In the Matter of)
)
Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)
)
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CC Docket No. 96-98

The accompanying comments, prepared by John Staurulakis, Inc. (JSI), are in response to the Notice of Proposed Rulemaking, released on April 19, 1996, in the above-referenced docket.

Any questions concerning this filing may be directed to JSI.

Sincerely,



Michael S. Fox
Director
Regulatory Affairs

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Comments of John Staurulakis, Inc.

Michael S. Fox
Director, Regulatory Affairs

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Summary

John Staurulakis, Inc. (“JSI”) hereby files these comments in response to the April 19, 1996 Notice of Proposed Rulemaking (“NPRM”) released by the Federal Communications Commission (“Commission”) concerning the implementation of the local competition provisions in the Telecommunications Act of 1996 (the “Act”). As indicated in these comments, JSI asks the Commission to not lose sight of the parallel the universal service mandates of the Act in mind as they move forward in this proceeding. The principle of universally available, affordable local exchange service, in all areas of the nation, has long been accepted and supported throughout the telecommunications industry. The 1996 Act mandates that universal service continue to be promoted even in light of the introduction of competition into local exchange telecommunications markets. JSI enthusiastically supports the universal service principles set forth in the 1996 Act.

In these comments, JSI explains that, in our opinion, the language in section 252 of the Act only applies to prior agreements between the incumbent local exchange carriers and the carrier requesting interconnection. This position is based upon the language in section 252(a)(1) that specifically refers to *voluntary agreements arrived at through negotiation*. Further, it is JSI’s position that if an incumbent local exchange carrier does request such interconnection of another incumbent local exchange carrier, then the only existing agreements that the Act requires to be filed with the State commission are those between the specific parties involved with the request.

JSI offers specific recommendations as to limitations and conditions that should be placed upon bundled, service resale. JSI believes that universal service in rural areas of the nation will be harmed, and potentially seriously threatened, unless incumbent rural local exchange carriers are allowed to place the limitations proposed by JSI on retail services offered for resale. JSI also believes that these limitations are consistent with the Act, particularly the provisions in the Act that reinforce the Commission's and the State's responsibilities to ensure that universal service is maintained coincident with the introduction of competition in local exchange markets.

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Comments of John Staurulakis, Inc.

John Staurulakis, Inc. ("JSI") hereby files these comments in response to the April 19, 1996 Notice of Proposed Rulemaking ("NPRM") released by the Federal Communications Commission ("Commission") in the above captioned proceeding.¹ JSI is a consulting firm specializing in financial and regulatory services to more than one hundred and fifty Independent Telephone Companies throughout the United States. JSI assists these companies 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 client companies. Since the proposals and questions raised in the NPRM

¹ See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 96-182, released April 19, 1996.

will affect the jurisdictional cost recovery of its client companies, JSI is an interested party in this proceeding.

The introduction of local competition into traditionally monopoly markets in the telecommunications industry will significantly alter the way the industry operates and the manner in which consumers purchase telecommunications goods and services. However, competition cannot and should not be introduced simply for competition's sake. The Telecommunications Act of 1996 (the "1996 Act" or the "Act")² deliberately established a balance between the objectives of competition and universal service. The 1996 Act requires the Commission and the States to consider the impact that competition will have on universal service before proceeding. This is particularly true with respect to the introduction of competition in rural areas of the nation, as evidenced by the protections afforded rural telephone companies within the Act. Therefore, JSI implores the Commission to take a cautious approach with respect to the introduction of competition into rural telecommunications markets. The long-standing public policy benefits of universal service must be maintained. It is our view that public policy will best be served by a controlled approach that introduces competition into rural telecommunications markets only if: (1) it can be unequivocally demonstrated that such competitive entry is in the public interest; (2) that it will not be unduly economically burdensome on the rural telecommunications carriers; and, (3) that those consumers residing in rural areas that do not have the advantage of competitive alternatives will not

² See Telecommunications Act of 1996, Pub. L. No. 104-104, Stat. 56 (1996) (to be codified at 47 U.S.C. sections 151 et seq.).

be harmed by the introduction of competition. As we move forward in this proceeding, it is important that the Commission and the States maintain their commitment to universal service, as mandated by the 1996 Act.

I. Duty to Negotiate in Good Faith

As noted in paragraph 48 of the NPRM, section 252(e)(1) of the Act states: “Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission.”³ Further, section 252(a)(1) states an agreement, “including any interconnection agreement negotiated before the date of the enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.”⁴ The NPRM seeks comment on whether or not these provisions require parties to submit existing agreements to State commissions for approval.

It is JSI’s position that language in section 252 of the Act only applies to prior agreements between the incumbent local exchange carriers (“LECs”) and the carrier requesting interconnection. Subsection 252(a)(1) of the Act (see below) is specifically referring to *voluntary agreements arrived at through negotiation*. Therefore, the Act only requires prior agreements involving the two parties involved to be submitted to the State commission. Also, unless another interconnecting incumbent LEC specifically requests interconnection, services, or network elements, pursuant to Section 252 of the Act, then

³ *Id.* at Section 252(e)(1)

⁴ *Id.* at Section 252(a)(1)

the Act does not require the filing of existing interconnection agreements among or between incumbent, non-competing LECs. Further, it is JSI's position that if an incumbent LEC does request such interconnection of another incumbent LEC, then the only existing agreements that the Act requires to be filed with the State commission are those between the specific parties involved with the request.

Section 252 of the Telecommunications Act of 1996

(a) AGREEMENTS ARRIVED AT THROUGH NEGOTIATION-

(1) VOLUNTARY NEGOTIATIONS- Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. **The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.** (emphasis added)

II. Resale

The NPRM also seeks comment on what limitations incumbent LECs should be allowed to place on services offered for resale under section 251(c)(4) of the Act.⁵ JSI believes that universal service in rural areas of the nation will be harmed, and potentially seriously threatened, unless incumbent rural LECs are allowed to place the following

⁵ See NPRM at para. 175.

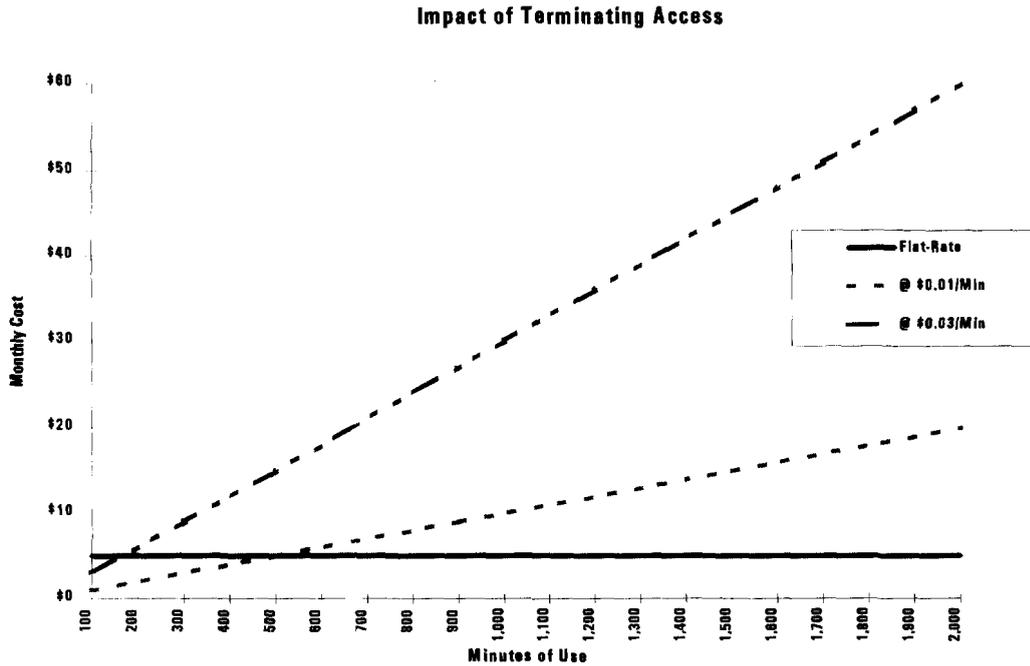
limitations on retail services offered for resale. There can be no little doubt that bundled, service resale will be unduly economically burdensome and may well threaten the availability of universal service at affordable rates unless the restrictions and provisions as proposed by JSI are adopted. JSI also believes that these limitations are consistent with the Act, particularly the provisions in the Act that reinforce the Commission's and the State's responsibilities to ensure that universal service is maintained coincident with the introduction of competition in local exchange markets.

First, it must be fully understood that the use of the incumbent rural LEC's bundled local service offerings does not give the new entrant the right to cross-connect the LEC's loop to the new entrant's switch for the purposes of switching local telephone calls. Resale must not be allowed to be used as a substitute for unbundled network components. Further, resale should only be made available to end user customers as a substitute for the independent's local service offering. New entrants must not be allowed to use bundled local exchange service resale as an alternative means of terminating traffic in an exchange. This is simply referring to the fact that *a bundle is a bundle*. At a minimum, the calling scopes and all elements of the resold local service offerings must remain consistent with that provided to the LEC's retail customers at tariffed rates, in the applicable exchange area. The use of bundled local service resale does not give the new entrants the right to have this service customized to their specifications. Again, a bundle must remain a bundle. This is certainly consistent with section 251 of the 1996 Act.

Also, any services that are no longer offered to new customers (such as party line services) should not be offered for resale. Since these "grandfathered" services are no

longer offered to retail customers on a prospective basis, it is not appropriate that they be offered to new entrants for resale to customers.

In addition to these restrictions, there are other issues which must be considered with respect to bundled, service resale by incumbent, rural LECs. In a resale environment, the incumbent LEC's facilities are utilized by the new entrant to provide the loop to the customer, to switch calls and to provide the transport and interconnection necessary for the new entrant's customers to talk to the world. Therefore, it is critical that the incumbent LEC retain all applicable toll access charge revenues and any explicit support revenues associated with any resold lines. Also, it must be understood that the new entrant is responsible for any terminating compensation, due to other connecting carriers, applicable to the resold local service offerings. This is necessary in order to prevent abusive practices whereby the incumbent LEC is paying more in terminating compensation than it receives in local service revenues. The following chart demonstrates the potential risk that facilities-based LECs face if the reseller is not responsible for such terminating compensation. The damage is caused when the incumbent LEC receives a flat rate from the new entrant for all resold lines, but is responsible for paying terminating compensation on a usage sensitive basis.



This chart shows that while revenues from the resold lines remain constant at the flat-rate, the possible terminating charges are potentially massive. In the example, per-minute terminating charges of \$0.01 and \$0.03 have been used, however, the chart shows that access rates will outstrip flat-rate revenues at almost any level.

Also, services that the incumbent LECs currently offer at State commission authorized discounted rates to schools, churches, hospitals and other similar organizations should not be required to receive an additional discount for bundled, service resale purposes. These services have been provided at discounts to these organizations as a community service and should not be considered a "retail" service for resale purposes. It is simply inappropriate to allow for a "discount on a discount" and would serve no public interest purpose.

Finally, the incumbent LEC must be able to pass on, without discount, those charges that are ultimately due to third parties. This would include such charges as the federal subscriber line charges (“SLC”), the primary interexchange carrier (“PIC”) change charge, state and local regulatory fees and taxes such as 911 fees or sales taxes, and any other non-recurring charges that are typically billed to the customer by the new entrant.

These safeguards are necessary due to public interest and universal service considerations. For example, if the access revenues associated with the resold lines are not retained by the incumbent, facilities based provider, then universal service will be threatened, which is clearly not in the public interest. Access revenues have historically been a key element in enabling LECs to provide universal service at affordable rates. If these revenues are not retained by the incumbent LEC in a resale environment, particularly since it is the incumbent’s facilities that are being utilized, then universal service will surely be threatened unless a fully compensatory and sustainable universal service fund is established.

The NPRM also seeks comment on the meaning of the language that “a State commission may, consistent with the regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.”⁶ Cross class resale must be aggressively prohibited. Cross class resale would, for example, allow a new entrant to purchase

⁶ See NPRM at para. 176.

residential lines from the incumbent LEC and resell these lines to another class of service, such as a single-line business customer. It would also allow the new entrant to purchase multiple single-line business bundles and resell them to multi-line businesses, or vice versa. JSI believes that the 1996 Act, in Section 251(c)(4)(b), expressly prohibits this type of activity. Residential service offerings must only be made available to residential customers and business services must only be available to other similarly classified business customers. Cross class resale would be harmful to universal service in that new entrants would be able to cannibalize the incumbent LEC's business customers by purchasing bundled residential service and selling it to business customers at rates significantly below those that could be offered by the incumbent. This will result in lost revenues and contribution that are today part of the formula that supports universal service. Such action would be anti-competitive and is contrary to the Act.

The NPRM asks for comment generally about the meaning of "wholesale rates" in section 251(c)(4) of the Act.⁷ Further, in paragraph 180 of the NPRM, comment is requested concerning the rules which should or should not be adopted to guide the states in determining avoided costs. In paragraph 180, the Commission specifically asks if avoided costs should include a share of general overhead costs. The retail rates of the incumbent LECs would then be reduced by this amount "offset by any portion of those expenses that they incur in the provision of wholesale rates."⁸ Any definition of wholesale rates must include a "netting" of avoided costs. That is, any avoided costs due

⁷ See NPRM at para. 179.

⁸ See NPRM at para. 180.

to resale must be offset by any additional costs imposed upon the incumbent LEC by the new entrants for resale purposes. This is particularly critical for incumbent rural LECs. The economies of scale and scope of the rural, independent telephone companies are significantly different than those enjoyed by larger local operating companies, such as the RBOCs. It is unrealistic to assume that a small, rural telephone company will be able to reduce costs through force or plant reductions when they lose a few customers to a new entrant, particularly in a resale environment. In fact, JSI fully expects costs to increase if the competitors' expectations, in terms of resale provisioning and services, are greater than that required to currently provide service to the independents' end user customers. Specific cost increases will be a direct function of what new or different billing and administrative functions the incumbent LECs are required to do to accommodate the new entrants. For instance, if electronic data base access to customer records, service order systems, or repair and maintenance systems are required by the new entrants, then costs will increase significantly. Most small, rural LECs do not have the type of customer service systems envisioned by new entrants who are requesting "non-discriminatory access" to customer and numbering systems in various State proceedings. If the rural LECs are required to create such systems, or even to modify their existing systems, then additional new costs will be significant. JSI believes that these costs must be reflected in any avoided cost study so that the new entrants, who will be the beneficiaries of such systems, bear the full cost that they have imposed upon the independents. Indeed, until the incumbent LECs fully understand what the expectations of the new entrants, the States and the Commission are with regard to service order processing, repair service,

installations, etc., it is impossible to accurately calculate the net avoidable costs of offering bundled, service resale. Small, rural LECs will not likely be able to reduce their customer service costs as a result of losing market share, and in fact may have higher costs than today. Independent telephone companies are small companies with limited staffing and resources. Quite often the same employees that handle customer service also deal with sales, marketing, central office and administrative functions. In such instances it is unrealistic to expect a small company to save any measurable level of costs simply because of a loss of customers to new entrants through resale.

III. Conclusion

JSI appreciates the opportunity to comment in this proceeding and encourages the Commission to keep universal service issues and the concerns of rural consumers clearly in mind as it proceeds forward in this docket. Competition cannot and should not be introduced simply for competition's sake. The Telecommunications Act of 1996 deliberately established a balance between the objectives of competition and universal service. This balance must be maintained in order for the public to be truly served by the introduction of competition in local telecommunications markets. This is especially critical as is pertains to the introduction of competition in the rural areas of the nation. Therefore, JSI urges the Commission to take a cautious approach with respect to the introduction of competition into rural telecommunications markets. Competition should only be introduced in rural markets if it can be unequivocally demonstrated that: (1) such competitive entry is in the public interest; (2) that it will not be unduly economically

burdensome on the rural telecommunications carriers; and, (3) that those consumers residing in rural areas that do not have the advantage of competitive alternatives will not be harmed by the introduction of competition.

Respectfully submitted,

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