The Florida Public Service Commission ("FPSC") commented that many of the problems which the FCC is trying to address in this NPRM are a result of the jurisdictional separations rules and process.[69] The GPSC offers no opinion whether costs are currently over- or under-allocated to the interstate jurisdiction, but such reviews should be done, and such allocations are one of the factors the Commission should consider before taking further steps to modify or restructure rates.

The GPSC asks the Commission to avoid any attempts to dictate to the State commissions the methodologies to be used for intrastate rates and charges, and to avoid any unilateral actions affecting separations that should be referred to the Joint Board. The Supreme Court has held that Section 152(b) fences off state regulation of intrastate services from the FCC. *See Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 374-75 (1986). In *Louisiana*, the FCC had concluded that state regulation of depreciation charges for local ratemaking purposes was thwarting federal objectives and thus imperiling the economic well-being of the telecommunications industry. The Supreme Court stated:

> [W]e do not assess the wisdom of the asserted federal policy of encouraging competition within the telecommunications industry. Nor do [w]e consider whether the FCC should have the authority to enforce, as it sees fit, practices which it believes would best effectuate this purpose. Important as these issues may be, our task is simply to determine where Congress has placed the responsibility . . ."

Id. at 359. The Supreme Court concluded that § 152(b) represents a jurisdictional overlay that fences off state regulation of local telecommunication matters from FCC intrusion. The Court stated:

> [G]iven the breadth of the language of section 152(b), and the fact that it contains not only a substantive jurisdiction limitation of the FCC's power, but also a rule of statutory construction ("[N]othing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to . . . intrastate communications service . . ."), we decline to accept the narrow view urged by respondents, and hold instead that it denies the FCC the power to preempt state regulation of depreciation for intrastate ratemaking purposes.

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[69] FPSC Comments at 5-6.

Id. at 372-373. The Court clarified that the congressional denial of power to the FCC in § 152(b) can only be overcome if Congress includes "unambiguous" and "straightforward" language in the Act either modifying § 152(b) or expressly granting the FCC additional authority. *Id.* at 377. Such language does not exist.

The legislative history of the 1996 Act also makes it clear that Congress intentionally retained § 152(b).[70] Congress also left intact the jurisdictional separations requirements and procedures of 47 U.S.C. §§ 221(c) (jurisdictional classification of property used for toll service) and 410(c) (refers separation of common carrier property and expenses between interstate and intrastate jurisdictions to a Joint Board), thereby further demonstrating its intent to retain the dual jurisdictional scheme for regulating rates and charges.

In addition to retaining § 152(b) and the separations requirements, Congress reiterated the requirement that repeal must be express and may not be by implication. Section 601(c) of the 1996 Act provides: "This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments."

Section 152(b) preserves the states' jurisdiction over charges for intrastate communications between carriers as well as to end users. The Supreme Court in *Louisiana* rejected the notion that § 152(b) only preserves the states' jurisdiction over charges to end users. In the Court's words:

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[70] Early drafts of the 1996 Act expressly excepted Title II and thus §§ 251 and 252 from the applicability of § 152(b), but the final version of the 1996 Act omitted the express exception. *See* First Report and Order, ¶¶ 80, 94. The only reasonable inference to be drawn is that, apart from the narrow areas where it expressly provided to the contrary, Congress consciously chose to leave the Act subject to § 152(b). As explained by the Supreme Court in *Russello v. United States*, 464 U.S. 16, 23-24 (1983): "Where Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended." *See also Arizona v. California*, 373 U.S. 546, 580-581 (1963). It is also presumed that Congress knows prevailing Supreme Court case law interpreting a statute when Congress does not make a change to an existing statute in a later Act which substantially revises the law. *E.g., Jefferson Parish Hospital Dist. v. Hyde*, 466 U.S. 2 (1984). Moreover, the broad, repeatedly litigated and universally understood reservation of state authority has existed under the statute for more than 60 years and under federal common law for nearly a century.

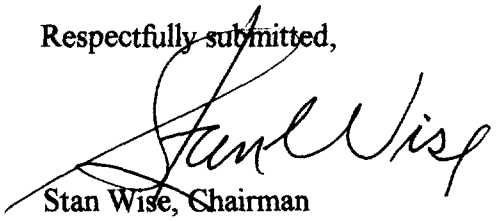
> We reject this narrow reading of § 152(b) . . . [w]e find no authority in the legislative history to support respondents' position that the sole concern of the state commissioners was with "protection against federal preemption of the states' setting of individual customer charges for specific intrastate services." Joint Brief 34. Rather, the legislative history reveals that representatives from the industry and the States were fully aware that what was at stake in the Act were broad powers to regulate, including, but not limited to, the setting of individual rates, and that "[t]he question of any appropriate division between federal and state regulatory power was a dominating controversy in 1934." McKenna, 37 Fed. Comm. L. J. at 2.

476 U.S. at 371, 372. As the Court noted, § 152(b) was intended to preserve the states' jurisdiction over nearly all aspects of intrastate telecommunications, including charges between carriers.

VI. CONCLUSION

The GPSC appreciates this opportunity to file reply comments on issues so significant to the development of greater telecommunications competition. The GPSC asks the Commission to proceed cautiously in order first to determine costs that should be recovered, and then decide any rate structure modifications, with an eye toward facilitating full and fair competition that brings more options and choices to telecommunications end users.

Respectfully submitted,



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FOR THE GEORGIA PUBLIC SERVICE COMMISSION

Dated: February 14, 1997

CERTIFICATE OF SERVICE

The undersigned Terri M. Lyndall does hereby certify that true and correct copies of the foregoing Reply Comments of the Georgia Public Service Commission to Comments Regarding the Notice of Proposed Rulemaking on Access Charge Reform, CC Docket No. 96-262, were served on this 13th day of February, 1997 by overnight delivery for filing with the Federal Communications Commission and by first-class United States mail, postage prepaid, to the persons who filed initial comments to which these reply comments are directed, and to those persons shown on the Federal Communications Commission's service list for this proceeding.

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