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

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

COMMENTS OF THE WESTERN ALLIANCE
ON STATE MEMBERS' REPORT

The Western Alliance hereby submits its comments on the "State Members' Report On Comprehensive Review Of Separations," which was filed in this proceeding on December 21, 1998 ("State Report"). It is commenting pursuant to the schedule established in the Commission's Public Notice (Report Filed By State Members Of Joint Board On Jurisdictional Separations), DA 99-414, released February 26, 1999.

Statement of Position

The Western Alliance agrees with the State Report that a system of jurisdictional separations is essential as long as the "Takings Clause" of the Fifth Amendment to the U.S. Constitution requires federal and state agencies to permit recovery of a fair return on the investments which they have mandated in local exchange networks and facilities. If the Joint Board and the Commission determine to modify the current separations system, they should do so only as part of a comprehensive process that resolves in a coordinated manner the interrelated universal service, separations, access charge and local service pricing issues affecting regulated local exchange carriers ("LECs").

The Western Alliance believes that the individual separations

issue most in need of immediate attention is the classification and treatment of rapidly growing Internet traffic. Whereas the Commission's Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, FCC 98-38, released February 26, 1999 ("Internet Ruling"), held that traffic bound to Internet Service Providers ("ISPs") is "mostly" interstate traffic, it did not clarify the status of Internet traffic for separations purposes. Because Internet traffic will generate no access revenues and no incremental local service revenues during the foreseeable future, the Western Alliance proposes that Internet traffic minutes be removed entirely from the calculation of the allocation factors used to separate interstate and intrastate costs.

The Western Alliance

The Western Alliance is a consortium of the Western Rural Telephone Association and the Rocky Mountain Telecommunications Association. It represents approximately 250 rural telephone companies serving relatively small numbers of access lines in sparsely populated, high-cost areas west of the Mississippi River. The Western Alliance has previously filed comments in this docket on December 10, 1997, and reply comments on January 26, 1998. It has also participated actively in the Commission's universal service (CC Docket No. 96-45) and access charge (CC Docket Nos. 96-262 and 98-77) proceedings.

Continuing Need For An Equitable Separations System

The "Takings Clause" of the Fifth Amendment prohibits the taking of private property for public use without just compen-

sation. It is well established that regulation of property may constitute a "taking," and that neither federal nor state agencies may regulate local exchange carriers and other utilities in a manner which precludes the earning of reasonable and sufficient returns on their investments. See FCC v. Florida Power Corp., 480 U.S. 245, 253 (1987); Duquesne Light Co. v. Barasch, 488 U.S. 299, 308 (1989).

Whereas one of the stated goals of the Telecommunications Act of 1996 ("1996 Act") was to transform local exchange service over time from a regulated monopoly to a competitive industry, much of the local exchange plant presently in use was required to be purchased and installed, in substantial part, to comply with federal and/or state regulatory mandates (including state "carrier of last resort" obligations, state and RUS modernization plans, and FCC-ordered equal access conversions). Even after passage of the 1996 Act, the Commission has continued to require LECs to invest in new or upgraded facilities in order to comply with dialing parity, local number portability, four-digit Carrier Identification Code ("CIC"), caller identification, Communications Assistance for Law Enforcement Act ("CALEA"), customer proprietary network information ("CPNI") and other requirements.

Western Alliance members and other rural telephone companies are generally more affected by, and more sensitive to, regulatory mandates and changes than larger LECs. Rural telephone companies serve mostly sparsely populated, high-cost areas unwanted by larger carriers, and frequently have been required by state "carrier of

last resort" requirements to construct and maintain loop facilities much longer and more expensive than the national average to reach isolated rural customers and customer clusters. In addition, they serve relatively small numbers of customers (e.g., most Western Alliance members serve fewer than 3,000 access lines) in areas that are less affluent than the national average, and consequently have much smaller customer and revenue bases (and longer time horizons) over which to recover the costs of the switch, plant and service upgrades increasingly mandated by federal and state regulators.

Rural telephone companies rely primarily upon two federal revenue sources (interstate access charges and federal Universal Service Fund support) and three state revenue sources (local service charges, intrastate access charges and state Universal Service Fund support) to recover their investment in local exchange facilities. As long as federal and state regulators impose service and infrastructure requirements upon LECs and as long as local exchange facilities are used to furnish interstate and intrastate services, a system of separations is necessary to allocate the investment and related joint and common costs to be recovered in each jurisdiction.

Coordination Of Separations,
Access And Universal Service Proceedings

Because separations, local service rates, access charges and universal service support are all integral elements of the same LEC economic structure, review and modification of the existing separations system must not be conducted in a vacuum.

The Western Alliance recognizes that substantial technological

and economic changes are taking place in the telecommunications and information industries. Where local exchange competition develops and thrives, market forces ultimately may render unnecessary most federal and state regulation of local exchange services, facilities and revenues. However, in areas where local exchange competition does not arise or survive (e.g., many rural areas), federal and state regulators will need to take the steps necessary to advance the important public policy goal that consumers in all portions of the nation have access to telecommunications and information services reasonably comparable to those available in urban areas (where competition is expected to flourish) at rates that are reasonably comparable to those charged for similar services in urban areas. 47 U.S.C. ₐ 254(b)(3).

To date, there does not appear to be sufficient coordination between FCC and state personnel working on the separations, access reform and universal service issues. Rather, there are separate proposals in the separations, access charge and universal service dockets for cuts in the interstate revenues and support flows of rural telephone companies, without any apparent consideration of the cumulative impact of such actions on future investment, service quality and local rates. For example, the present proceeding includes proposals for the assignment of all costs "associated" with the provision of local exchange service to the intrastate jurisdiction, for limitation of recovery of spare facility costs, and for use of USF revenues as a dollar-for-dollar offset to interstate access revenue requirements. Likewise, the pending

rate-of-return Access Charge proceeding (CC Docket No. 98-77) proposes shifts and reductions in interstate access revenues, including reallocation of General Support Facilities (GSF) investment and expenses to the Billing and Collection category where a substantial portion will become unrecoverable. Again, the Universal Service proceeding (CC Docket No. 96-45) has reduced the transitional Universal Service Fund ("USF") revenues of many rural telephone companies (via an unreasonably low cap on corporate operations expense, and extension of the "interim" cap on the overall size of the USF), and threatens future disruptions if proxy models and benchmarks are ultimately imposed.

If interstate access revenues are reduced by actions taken in this proceeding or the access reform docket, to what extent will the reduction be offset by increases in local service rates, intrastate access charges and/or federal or state universal service support? If local service rates are forced to pick up most of the slack, how much can they be increased before substantial numbers of households drop off the network? Also, how much will state commissions permit local service rates to increase? If federal and/or state universal service funds are the designated backstop, how large will they become and who will be required to contribute to them? Can states with predominately rural populations afford to maintain large state universal service funds, and (if not) how will residents of such states obtain access to services in accordance with the "reasonably comparable" goals of Section 254(b)(3) of the Act?

These and other critical questions cannot be resolved without extensive coordination among the federal and state entities dealing with separations, local service, access charge and universal service issues. At the very minimum, both the Separations and Universal Service Joint Boards, as well as FCC and state personnel dealing with the pending Separations, Access Reform and Universal Service proceedings, must act to coordinate the proceedings and to consider the **cumulative** impact of the various proposed changes upon the services and rates available in rural areas.

Separations Treatment Of Internet Traffic

In its recent Internet Ruling, the Commission held that the jurisdictional nature of ISP-bound traffic is determined by the nature of the end-to-end transmission between an end user and the Internet, and that at least a substantial portion of dial-up ISP-bound traffic is interstate. The Western Alliance fully concurs that the Internet is primarily an interstate and international network of networks, and that Internet traffic minutes are indisputably interstate in nature.

However, the Internet Ruling did not clarify the classification and treatment of Internet traffic for separations purposes. Rather, the Commission noted twice that LEC expenses associated with ISP-bound traffic traditionally have been characterized as intrastate for separations purposes. Internet Ruling, paras. 5, 23. However, it also noted that SBC had recently indicated its plan to allocate 100 percent of the costs associated with Internet traffic to the interstate jurisdiction. Id. at n.76. The Commission

pointedly failed to declare what it deemed to be the appropriate characterization of Internet traffic for separations purposes, or to indicate whether its jurisdictional ruling required or permitted classification of Internet traffic as interstate for separations purposes as well.

Previously, the National Exchange Carrier Association ("NECA") has required issuing carriers in its Tariff F.C.C. No. 5 (including many Western Alliance members and other rural telephone companies) to classify Internet traffic passing through access nodes operated by ISPs within the end user's local calling area as "intrastate" for separations study purposes. As Internet users and usage has exploded during recent years[1], this requirement has been producing increasingly high intrastate allocation factors in the separations studies conducted by Western Alliance members and other rural telephone companies. As a consequence, increasing portions of the switching and other traffic sensitive costs of small telephone companies have been allocated to the intrastate jurisdiction. At the same time, because most Internet traffic is not presently subject to measured local service rates or intrastate access charges, these increasing intrastate cost allocations have not been accompanied by offsetting revenue allocations. This condition is putting increasing pressure upon the levels and affordability of

[1] As the Commission has recognized, Internet usage patterns differ substantially from the usage patterns of voice traffic, particularly because Internet traffic has much longer call holding times. Access Charge Reform, First Report And Order, CC Docket No. 96-262, FCC 97-158 (released May 16, 1997), at para. 347. Western Alliance members report that some Internet users frequently stay online for hours, and sometimes even days.

local service rates.

The interstate/international nature of Internet traffic requires that it be classified as "interstate" for separations studies and other jurisdictional separations purposes. However, at present, it appears that political and policy considerations preclude the imposition of interstate access charges upon ISPs. Hence, the allocation of increased portions of the switching and other traffic sensitive costs of small telephone companies to the intrastate jurisdiction would also not be accompanied by offsetting interstate access revenues.

The Western Alliance believes that the most reasonable and equitable approach is for the Joint Board and Commission to remove Internet traffic minutes entirely from the calculation of the allocation factors used for separations purposes. This will prevent either local ratepayers (many of whom still do not use the Internet) or interexchange carriers (many of whom must compete with ISPs) from subsidizing the entire usage of the local exchange network by ISPs and their customers.

The Western Alliance believes that removal of Internet traffic entirely from the calculation of allocation factors is more equitable than freezing such factors as of a specified year or employing a rolling multi-year average. In both of the latter cases, Internet traffic would continue to impact the allocation of costs to the jurisdiction within which it was included, without contributing offsetting revenues. Until Internet traffic is subject to measured local service rates and/or access charges, it

is best to remove it entirely from the separations process and allow the local exchange network costs associated with Internet use to be recovered from local service customers, interexchange carriers and other network users.

Conclusion

The Western Alliance agrees that a jurisdictional separations system remains essential. However, changes to the present system should only be made as part of a comprehensive and coordinated process that deals with interrelated universal service, access charge and local service pricing issues as well.

The Western Alliance believes that the separations issue most in need of immediate attention is the classification of Internet traffic. It proposes that Internet traffic be classified as interstate for all purposes, but that Internet traffic be removed entirely from the calculation of the allocation factors used to separate switching and other traffic sensitive costs.

Respectfully submitted,
THE WESTERN ALLIANCE

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