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JOE GARCIA, CHAIRMAN
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E. LEON JACOBS, JR.
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DIVISION OF POLICY ANALYSIS &
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Public Service Commission

July 14, 2000

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VIA AIRBORNE EXPRESS

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW - TW-A325
Washington, DC 20554

Re: *Ex Parte* Response of Commissioner E. Leon Jacobs, Jr., to the May 8 CALLS
ILECs' *Ex Parte* Letter in Docket Nos. 98-137, 99-117, and 98-26

Dear Ms. Salas:

Attached is a copy of a letter to Chairman Kennard from Commissioner Jacobs regarding the
CALLS May 8th depreciation filing.

This original and two copies are being sent under separate cover pursuant to your rule on ex
parte presentations, Rule 1.1206 of the FCC Rules.

Sincerely,

Cynthia B. Miller, Esquire
Bureau of Intergovernmental Liaison

CBM:tf

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STATE OF FLORIDA

E. LEON JACOBS, JR.
COMMISSIONER



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Public Service Commission

July 14, 2000

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JUL 18 2000

FCC MAIL ROOM

The Honorable William E. Kennard
Federal Communications Commission
445 Twelfth Street, SW
Washington, D.C. 20554

VIA AIRBORNE EXPRESS

Re: *Ex Parte* Response of Commissioner E. Leon Jacobs, Jr., to the June 1 CALLS
ILECs' *Ex Parte* Letter in Docket Nos. 98-137, 99-117, and 98-26

Dear Chairman Kennard:

As a member of the National Association of Regulatory Utility Commissioners (NARUC) Consumer Affairs Committee and as a member of the Florida Public Service Commission (FPSC), I submit this *ex parte* filing in response to the June 1, 2000, *ex parte* letter filed jointly by the incumbent local exchange carriers (ILECs) participating in the Coalition for Affordable Local and Long Distance Service (CALLS) plan.

The Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 98-137, sets out an alternative proposal by the Coalition for Affordable Local and Long Distance Services (CALLS) that, in short, would allow an ILEC to opt for depreciation deregulation if it agrees to adjust the net book costs on its regulatory books to the level reflected in its financial books, amortize the difference between its regulatory and financial books above-the-line over a five year period, and commit not to recover from customers any of this amortization. The FNPRM specifically asked the ILECs if the commitment not to recover any of the amortization included both the interstate and intrastate portions. Even though the ILECs have provided various responses to this question, their commitment not to recover the intrastate portion of the amortization remains an outstanding issue.

It is essential that if the FCC adopts the above-the-line amortization proposal in the FNPRM, the ILECs must be precluded from recovering both the interstate and intrastate portions of the total amount subject to amortization, i.e., the full difference between their financial and regulatory books. If the FCC adopts an above-the-line amortization procedure without a clear and explicit requirement that the intrastate portion of the amortization cannot be recovered in customer rates, a substantial burden will be placed on state regulators to prevent adverse rate impacts on consumers. However, the pivotal question is whether the FCC can impose such a requirement, and even if it can, whether the FCC has the authority to enforce such a requirement. This is the single most important concern to the states if the Commission adopts an above-the-line accounting solution.

The Honorable William E. Kinnard

July 14, 2000

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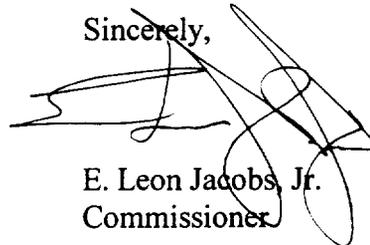
Above-the-line FCC treatment would lead to large increases in the state jurisdictional depreciation expenses. Under the FCC's separations rules, approximately 75%, or \$4.5 billion per year in additional costs, would be designated as intrastate. If this happens, the onus will be on the individual states to require below-the-line treatment and to prevent serious adverse consumer impacts.

While the individual states clearly have the authority by the *Louisiana Public Service Commission v. FCC*, 476 U.S. 355 (1986) (*Louisiana*) to set depreciation rates for state ratemaking purposes, it will be difficult for states to prevent recovery of the additional costs the ILECs will report under the proposal set forth in the FNPRM. For states to disallow billions of dollars which the FCC has designated for above-the-line treatment would raise serious hurdles.

An additional concern with above-the-line treatment is that it will create the argument there is a rebuttable presumption that financial depreciation parameters are valid and appropriate for all purposes. The ILECs have already stated in their filed comments to the FNPRM that the FCC's approval of the depreciation proposal will represent the Commission's "endorsement" of financial depreciation factors for regulatory purposes. An above-the-line decision will simply exacerbate the situation and will make it much more difficult for states to use depreciation factors other than the ILEC's financial depreciation factors for the determination of Unbundled Network Elements (UNEs) or interconnection rates. NARUC's research has identified only three states that currently use financial depreciation factors for determining UNE prices. This appears a clear indication that states have not found financial depreciation factors reasonable or justified.

It would be unfortunate and unreasonable if the FCC were to decide to use above-the-line treatment with no apparent benefit at the federal level and with a real and large liability at the state level. Indeed, it is a peculiar approach—especially coming from the agency of the federal government.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Leon Jacobs, Jr.", written over a printed name and title.

E. Leon Jacobs, Jr.
Commissioner

ELJ:PL:CM:tf

Attachment

cc: The Honorable Susan Ness
The Honorable Harold W. Furchgott-Roth
The Honorable Michael K. Powell
The Honorable Gloria Tristani
Brad Ramsay, NARUC