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
	)	
Options for Comprehensive Separations Reform	)	

COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION

Pursuant to the Public Notice released by the Federal Communications Commission (FCC) on December 20, 2001,[1] the United States Telecom Association (USTA)[2] hereby files its comments concerning the "Glide Path" Policy paper (Policy Paper) filed with the FCC on December 19, 2001, by the State Members of the Federal-State Joint Board on Separations (Joint Board). USTA commends the State Members of the Joint Board, and the State Joint Board Staff, for the work that they have done in developing a submission that is both thoughtful and provocative. Nonetheless, USTA believes that it is far to soon for the Joint Board or the FCC to consider a transition from

[1] *Common Carrier Bureau Seeks Comments on "Glide Path" Policy Paper Filed by State Members of the Federal-State Joint Board on Jurisdictional Separations*, CC Docket No. 80-286, Public Notice, DA 01-2973 (rel. Dec. 20, 2001); *Erratum to Public Notice (DA 01-2973)*, CC Docket No. 80-286, Public Notice (rel. Dec. 26, 2001).

[2] USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA represents more than 1200 members that provide telecommunications services worldwide, including a full array of voice, data and video services over wireline and wireless networks, and products and services to the telecommunications industry. USTA supports the concept of universal service, and its carrier members are leaders in the deployment of advanced telecommunications services to American and international markets.

the current five-year interim freeze to a permanent separations reform mechanism or for meaningful reactions to the Policy Paper to be filed. USTA believes that the freeze should continue for the full five years and that the uncertainties that justified the freeze in May 2001 as a stabilizing measure continue to exist. Accordingly, the Common Carrier Bureau (CCB) should leave the record open for comments on the Policy Paper indefinitely and at the end of calendar year 2002 consider whether circumstances warrant setting closing dates for comments and reply comments concerning the Policy Paper. The CCB should not establish a closing date for filing comments before July 1, 2003, which would allow interested parties to have the benefit of at least two year's experience under the interim freeze before formally reacting to the options presented in the Policy Paper.

DISCUSSION

Less than one year ago, the FCC adopted a five-year interim freeze of the Commission's Part 36 separations rules, which took effect July 1, 2001.[3] In adopting the freeze, the FCC concluded that instituting a mandatory interim freeze was consistent with its "goals of stabilizing and simplifying the Part 36 separations process pending comprehensive reform."[4] In support of this conclusion, it stated:

> First, with regard to the goal of stability, we believe that a freeze will achieve the goal of stability and provide regulatory certainty for carriers by minimizing any cost shift impacts on separations results that might occur as a result of circumstances not contemplated by the Commission's current Part 36 rules, such as growth in local competition and new technologies. Since the *NPRM* was released in 1997, there have been rapid changes in the telecommunications infrastructure, such as the growth

[3] *See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 01-162 (rel. May 22, 2001) (*Report and Order*).
[4] *Id.* at ¶12.

> in Internet usage and the increased usage of packet switching. We believe that these types of changes may produce cost shifts in separations results because these and other new technologies, such as digital subscriber line (DSL) services, as well as a competitive local exchange marketplace, are not sufficiently contemplated by the current Part 36 rules. We believe, therefore, that the most effective action at this time will be to freeze the separations process on an interim basis, until the Commission and the Joint Board have had the opportunity to more comprehensively reform Part 36.[5]

In response to commenters that opposed a freeze out of concern that it would continue claimed cost misallocations, the FCC stated that those concerns were "offset by the added regulatory certainty that carriers will enjoy, since freezing the separations process in place will avoid any sudden cost shifts in this time of rapid change."[6] The FCC correctly noted that the freeze would also further its goal "of achieving greater competitive neutrality during the transition to a competitive marketplace by simplifying the separations process for those carriers subject to Part 36."[7]

The Policy Paper presented by the State Members of the Joint Board is both thoughtful and provocative. But, it raises numerous complex questions that must be addressed in order to comment on the multiple options presented in the Policy Paper. USTA wants to give careful consideration to each of the options. For example, Option 6 contemplates the complete removal of the federal-state jurisdictional separations process. USTA has stated in previous filings in this docket that the long-term goal should be to eliminate the Part 36 jurisdictional separations rules.[8] USTA agrees that the time will come when regulators and the industry must look "critically at the way in which

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[5] *Id.*
[6] *Id.*
[7] *Id.* at ¶13.
[8] *See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, The United States Telecom Association's Comments Regarding the *Recommended Decision* Issued by the Federal-State Joint Board on Jurisdictional Separations (USTA Comments), filed September 25, 2000, at p.8.

jurisdictional responsibility is assigned for pricing in telecommunications."[9] USTA also believes, though, that it is premature to conduct such an examination less than seven full months since the implementation of the freeze.

Despite arguments in opposition by USTA[10] and others, the FCC agreed with the Joint Board that the comprehensive review of the separations process must continue during the freeze.[11] But, it also agreed with the Joint Board that "two years would generally be an appropriate time to seek comment on the impact of the freeze.[12] It would be preferable for the FCC to seek comment on the options presented in the Policy Paper after the passage of at least a two years from the effective date of the freeze.[13] This would allow all concerned to assess the impact of the freeze in conjunction with changes in technology, changes in local competition and other relevant regulatory actions taken by the FCC before or since the freeze took effect.

Prior to the effective date of the freeze, the FCC adopted an integrated interstate access reform proposal for price cap carriers put forth by the Coalition for Affordable Local and Long Distance Service (CALLS)[14] and a decision on remand concerning compensation for Internet service provider-bound traffic (currently on appeal in the Federal Circuit Court of Appeals for the District of Columbia).[15] Each has multi-year impacts. Since the effective date of the freeze, the FCC has commenced a proceeding

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[9] Policy Paper at p.3
[10] USTA Comments at pp.8-9.
[11] *Report and Order* at ¶33.
[12] *Id.*
[13] Two years may prove to be insufficient to allow for a useful evaluation of the freeze or consideration of the most appropriate permanent separations reform mechanism.
[14] *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low Volume Long Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45 (rel. May 31, 2000) (*CALLS Order*).
[15] *See Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order (rel. Apr. 27, 2001) (*Reciprocal Compensation Remand Order*).

with respect to developing a unified inter-carrier compensation regime,[16] that examines bill and keep as a compensation structure, and an access reform order for incumbent local exchange carriers subject to rate-of-return regulation (also having multi-year impacts).[17] The FCC has several proceedings in various stages that are examining ILEC broadband services and high-speed access to the Internet over competing cable, wireless, satellite and telecommunications platforms. The FCC and the industry are facing a major universal service proceeding on remand from the Federal Circuit Court of Appeals for the 10th Circuit. More ILEC service and geographic markets are subject to competition than ever before. There is at least as much regulatory, technological and market uncertainty today as there was when the FCC adopted the separations freeze. While the freeze will offer an opportunity to re-examine jurisdictional separations, seven months into the five-year freeze is far too early to engage in a constructive effort.

CONCLUSION

Separations reform, with the goal of eliminating the FCC's Part 36 jurisdictional separations rules, is vitally important to USTA and its members. USTA intends to continue its active participation in the separations reform process. For the reasons set forth above, USTA urges the FCC to not act precipitously in forging forward with a comprehensive review of separations. There is no urgent need to obtain comments on the options presented in the Policy Paper by the State Members of the Joint Board. The CCB should leave the record open indefinitely for filing comments on the Policy Paper. At the

[16] *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, 16 FCC Rcd. 9610 (2001).

end of calendar year 2002, the CCB should determine whether circumstance warrant establishing closing dates for comments and reply comments. The closing date for comments should be set no earlier than July 1, 2003, two years from the effective date of the interim separations freeze.

Respectfully submitted,

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[17] *See 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) (*MAG Order*).