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

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

**COMMENTS OF THE WESTERN ALLIANCE**

The Western Alliance, by its attorney, hereby submits its comments regarding the "glide path" policy paper<sup>1</sup> filed by the State Members of the Federal-State Joint Board on Separations (Joint Board) on December 19, 2001. These comments are filed pursuant to the procedures set forth in the Public Notice (Common Carrier Bureau Seeks Comment on "Glide Path" Policy Paper Filed by State Members of the Federal-State Joint Board on Jurisdictional Separations), DA 01-2973, released December 20, 2001.

The Western Alliance believes that retention of the jurisdictional separations process is both mandated by existing law and necessary to preserve the availability of quality services at affordable rates in Rural America. Proposals to eliminate or radically restructure the existing separations process fail to address the critical facts that the local exchange network carries both interstate and intrastate traffic; and that regulatory jurisdiction over this traffic is expressly divided between the FCC and state commissions.

Moreover, initiation of a proceeding at this time to consider the elimination or restructure of separations would disrupt the regulatory stability and certainty needed by rural telephone companies if they are to continue making the investments necessary to

<sup>1</sup> "Options for Separations: A Paper Prepared by the State Members of the Separations Joint Board," CC Docket No. 80-286, filed December 19, 2001 ("Glide Path Paper").

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offer new services and maintain existing service quality. For over six years, rural telephone companies have operated in an extremely uncertain environment while the Commission considered changes that would significantly impact the interstate access and universal service revenues that comprise a critical 45-to-70% of their revenue base. Finally, during 2001, the Commission resolved many of these issues for at least a five-year period in its orders adopting the Rural Task Force (RTF) Plan,<sup>2</sup> the Separations Freeze,<sup>3</sup> and portions of the Multi-Association Group (MAG) Plan.<sup>4</sup> The Commission and Joint Board should give the new universal service, separations and access mechanisms a fair opportunity to function. They should refrain from initiating a new period of uncertainty unless and until (if ever) it becomes evident that these new mechanisms are unable to address the relevant industry issues and problems.

### **The Western Alliance**

The Western Alliance is a consortium of the member companies of the Western Rural Telephone Association and the Rocky Mountain Telecommunications Association. It represents about 250 rural telephone companies west of the Mississippi River.

Western Alliance members are generally small local exchange carriers serving sparsely populated, high-cost rural areas. Most members serve less than 3,000 access lines overall, and less than 500 access lines per exchange. Their revenue streams differ

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<sup>2</sup> Fourteenth Report And Order, Twenty-Second Order On Reconsideration, And Further Notice Of Proposed Rulemaking In CC Docket No. 96-45, And Report And Order In CC Docket No. 00-256 (Federal-State Board on Universal Service), 16 FCC Rcd 11,244 (2001) ("RTF Order").

<sup>3</sup> Report And Order (Jurisdictional Separations and Referral to the Federal-State Joint Board), 16 FCC Rcd 11,382 (2001) ("Separations Freeze Order").

<sup>4</sup> Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166 (Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers), FCC 01-304, released November 8, 2001 ("MAG Order").

greatly in size and composition from those of the price cap carriers. Most members generate revenues much smaller than the national telephone industry average, and rely upon interstate access and universal service dollars for 45-to-70% of their revenue base.

At the same time, Western Alliance members incur per-customer facilities and operating costs far in excess of the national average. Not only does their small size preclude their realization of significant economies of scale, but also they serve remote and rugged areas where the cost per loop is much higher than in urban and suburban America. Their primary service areas are comprised of sparsely populated farming and ranching regions, isolated mountain and desert communities, and Native American reservations. In many of these high cost rural areas, the Western Alliance member not only is the carrier of last resort, but also is the sole telecommunications provider ever to show a sustained commitment to invest in and serve the area.

Western Alliance members are highly diverse. They did not develop along a common Bell System model, but rather employ a variety of network designs, equipment types and organizational structures. They must construct, operate and maintain their networks under a wide variety of climate and terrain conditions, ranging from the deserts of Arizona to the frozen tundra of Alaska, and from the valleys of Oregon to the plains of Kansas to the mountains of Wyoming.

**A Reasonable Separations Process Is Mandated By Law  
And Is Necessary To Maintain Affordable Rural Rates**

Separations procedures are the result of two critical factors. First, the local exchange network is the most costly portion of the public switched telephone network to construct and operate, and is used extensively for the provision of both interstate and intrastate telecommunications services. Second, both the FCC and state commissions

have jurisdiction to regulate telecommunications services, with the FCC having jurisdiction over interstate services under Section 2(a) of the Communications Act and the states having jurisdiction over intrastate services pursuant to Section 2(b) thereof.

Four years prior to the adoption of the Communications Act, the Supreme Court's decision in Smith v. Illinois Bell Telephone Co., 282 U.S. 133 (1930), required the separation of the interstate and intrastate property, revenue and expenses of telephone companies. The Court held that this separation "is essential to the appropriate recognition of the competent governmental authority in each field of regulation." Id. at 148.

Although other aspects of telecommunications technology have changed during the ensuing 71 years, both interstate and intrastate calls continue to be carried over common local exchange network facilities and both the FCC and the state commissions continue to have jurisdiction over telecommunications. Hence, the separations requirements of Smith v. Illinois Bell continue to be the law of the land, and have never been changed significantly by Congress or by subsequent judicial decisions. For example, the U.S. Court of Appeals for the D. C. Circuit declared in National Association of Regulatory Utility Commissioners v. FCC, 737 F.2d 1095, 1105 (D.C. Cir.1984), that the basic system of separations<sup>5</sup> mandated by Smith v. Illinois Bell remained in effect fifty-four years later. The same court reiterated the continuing validity of Smith v. Illinois Bell in its decisions in Rural Telephone Coalition v. FCC, 838 F.2d 1307, 1314 (D.C. Cir.1988) (Smith v. Illinois Bell holds that interstate and intrastate telephone costs must be separated for jurisdictional purposes, and that such separation must be done

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<sup>5</sup> This system required an appropriate percentage of local plant costs to be placed within the jurisdiction of federal rather than state regulators, and limited state regulators solely to the authorization of the recovery of the portion of local telephone plant costs allocated to the intrastate jurisdiction. National Association of Regulatory Utility Commissioners v. FCC, supra at 1104.

according to reasonable measures) and in Crockett Telephone Co. v. FCC, 963 F.2d 1564,1569 (D.C. Cir. 1992) (the Congress that enacted the Communications Act was regulating in response to Smith v. Illinois Bell, and no intervening Congress has seen fit to depart from the decision that some form of separation is to remain).

The Glide Path Paper does not discuss or deny the long-standing legal requirement for a reasonable separations process. Whereas it claims<sup>6</sup> that "Congress has shown itself more willing to preempt state jurisdiction" and that "Congress has seemingly become less interested in traditional concerns" (Paper, pp. 6-7), the paper offers no evidence that Congress has sought to eliminate or change the existing separations process. On the contrary, Congress has given no perceptible indication that it intends to eliminate or restructure the separations process in the future, or that it desires the FCC or the Joint Board to undertake the task.

The Glide Path Paper ventures into very dangerous territory when it suggests that the traditional separations goal of "obtaining contribution to loop costs from interstate services" be given reduced importance (Id. at 8). Interstate toll carriers and Internet service providers make extensive use of local exchange networks to originate and terminate their traffic. Notwithstanding some posturing during the mid-1990s, interstate toll carriers have made no significant or sustained attempt to construct or acquire their own "last mile" (in rural areas, "last 10-to-50 miles") facilities. Rather, they appear to have realized that the local exchange network is the most difficult and costly portion of the public switched telephone network to construct and operate, and have opted instead to

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<sup>6</sup> These claims are belied by the numerous telecommunications regulatory responsibilities imposed upon state commissions in the Telecommunications Act of 1996, and by the extensive regulation of telecommunications carriers, services and rates continued in that statute.

focus their investments and operations on more profitable toll routes. The Western Alliance does not oppose or criticize these investment decisions, so long as interstate toll carriers continue to pay a fair and reasonable share of the costs of the local exchange networks they use.

The Western Alliance notes that Internet service providers also use the local exchange network extensively to originate and terminate their traffic. To the extent that the existing access and separations procedures are not perfect, one of their primary flaws is that they give a major and unwarranted free ride to Internet service providers. Notwithstanding the fact that Internet users regularly tie up local exchange facilities for lengthy holding times, Internet service providers remain exempt from access charges. Likewise, existing separations procedures that classify Internet traffic as "intrastate" require local exchange customers to bear the major portion of the costs imposed by Internet service providers and their customers upon the local exchange network, whether or not the local exchange customers themselves use Internet services.

The Glide Path Paper asserts that separations "provides little benefit to our constituents" and that "customers care little whether the charges on their bills are the result of federal or state action" (*Id.* at 2). It claims that "[a]side from the overall level of their bills, customers care most about the relationship between charges imposed upon a flat rate basis [historically, the predominant mode for recovery of local exchange costs] and charges that vary with usage [historically, the predominant mode for recovery of interstate costs]" (*Id.*). It claims that this "relationship" has been weakened and soon will be severed entirely by increased federal reliance upon fixed monthly charges such as subscriber line charges ("SLCs") (*Id.* at 3).

These Glide Path Paper assumptions are not true for many rural portions of the states west of the Mississippi River. As indicated above, Western Alliance members serve sparsely populated and rugged rural areas, where loop lengths often range from 10 to 50 miles. The rugged terrain and low-density populations served by Western rural telephone companies increase their per-customer loop investments and operating costs to levels well above telecommunications industry averages. Likewise, economies of scale are difficult to realize due to the much smaller numbers of customers served by the switches and local exchanges of Western rural telephone companies vis-à-vis telecommunications industry averages. As a result, Western Alliance members rely upon interstate access and universal service dollars for 45-to-70 percent of their revenue base.

If interstate cost allocations and interstate "contribution" are eliminated or radically reduced by adoption of certain Glide Path Paper "options" (e.g., Option 5: Facilities-Based Separations or Option 6: One State Jurisdiction), customers in the Rural West will definitely "notice" when their monthly local service rates are forced to increase by as much as \$50-to-\$100 or more per line.<sup>7</sup> They may "care little" about \$3.50 or \$5.00 per month SLCs, but they will certainly care about \$50-to-\$100 or greater increases in their monthly local service rates. In fact, rate increases of this magnitude will render local telephone service (and therefore also access to interexchange service) unaffordable for many households, and especially for low-income households.

By requiring interstate services to contribute their fair share towards the cost of the local exchange networks they use, the current separations process and interstate

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<sup>7</sup> See "Comments Of The Western Alliance" filed August 21, 2001 in CC Docket No. 01-92 (Developing a Unified Intercarrier Compensation Regime), wherein the Western Alliance used National Exchange Carrier Association data to estimate the impact on local service rates of certain proposals to eliminate or drastically reduce interstate access charge revenues.

access charge system have helped to keep local service rates at affordable levels. Given that nationwide telephone penetration has remained stable at approximately 94 percent from 1993 to the present, it is difficult to understand why so many federal and state regulators seem so intent upon "fixing" mechanisms that are not broken. Regulators should allow these existing mechanisms to continue to advance the important universal service goals that they have so capably served during recent years.

**A Period Of Regulatory Stability Is Necessary To  
Implement Recent Policy Changes And Encourage Rural Infrastructure Investment**

At the time it adopted the RTF Order in May of 2001, the Commission repeatedly emphasized that it would provide predictability, certainty and stability to rural telephone companies for five years, so that they can continue to provide supported telecommunications services at affordable rates to American consumers. RTF Order at paras. 1, 10, 11 and 30. Similarly, when it adopted its Separations Freeze Order in May of 2001, the Commission stressed that it would bring stability and regulatory certainty to the separations process in order to avoid sudden cost shifts in a time of rapid market and technology changes. Separations Freeze Order at paras. 2 and 12. Finally, in adopting the first phase of the MAG Order in October of 2001, the Commission declared that one of its primary benefits was to provide certainty and stability for rate-of-return carriers and encourage investment in Rural America. MAG Order at paras. 2 and 12.

The Western Alliance agrees that regulatory certainty and stability are essential if rural telephone companies are to have the ability and incentive to invest in the infrastructure necessary to continue providing quality telecommunications services at affordable rates. Western Alliance members and other rural telephone companies have long been leaders in bringing state-of-the-art telecommunications facilities and services

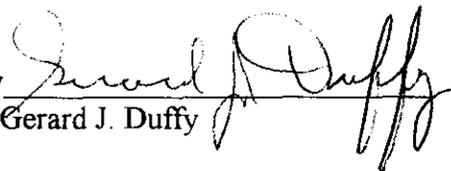
to Rural America. However, if their owners (including cooperative members) and lenders are to provide the capital necessary to invest in broadband and other infrastructure improvements, they must have reasonable assurance that the investments are likely to be recouped. Because of the small size and scale of rural telephone companies, the time horizons for recovery of substantial investments are longer than the telecommunications industry average while there are relatively few alternative funding sources if investment costs cannot be recovered via traditional revenue sources. Hence, if the Commission and the Joint Board want to encourage investment by the entities with a long and proven commitment to Rural America, they need to establish a climate of regulatory stability for rural telephone companies.

After suffering through more than six years of uncertainty while their critical universal service and interstate access revenues were threatened by various proposals to "reform" universal service, access and separations, rural telephone companies believed they had finally achieved some level of stability with the adoption of the five-year programs in the RTF Order, MAG Order and Separations Freeze Order during 2001. The Western Alliance urges the Commission and the Joint Board to give these newly adopted mechanisms a fair opportunity to work, and monitor how they impact existing and future industry issues, before beginning yet another "comprehensive review" of universal service, access or separations. By placing the future of these new regulatory mechanisms into question before they have had a fair chance to succeed or fail, such premature "reviews" create unnecessary uncertainty in the rural telephone industry and make it more difficult and expensive for rural telephone companies to make needed infrastructure investments.

### Conclusion

The Commission should clarify that it has completed its reform of universal service and separations, as well as of a substantial portion of access charges, for rural telephone companies and other rate-of-return carriers during 2001. Other than completing action upon the incentive portions of the MAG Plan, the Commission should announce that it will establish and maintain a much-needed period of regulatory stability to encourage rural telephone company investment while it monitors the effectiveness of the new mechanisms. Among other things, the Commission should declare that it will not undertake the elimination or radical restructuring of separations, as proposed in the Glide Path Paper, unless and until it receives a clear signal from Congress that the existing separations system needs to be changed, and unless and until it develops significant evidence that such changes will not discourage infrastructure investment nor cause local service rates to exceed affordable levels in significant portions of Rural America.

Respectfully submitted,  
**THE WESTERN ALLIANCE**

By   
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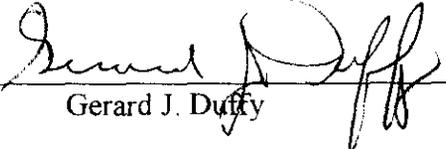
Dated: January 18, 2002

**CERTIFICATE OF SERVICE**

I, Gerard J. Duffy, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast and that a copy of the foregoing "**Comments of the Western Alliance**" was served this 18th day of January, 2002, by hand delivery as indicated, to the persons listed below.

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