Before the
Federal Communication 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	**)**	**DA 01-2973**
Reform		

Reply Comments of:
Fred Williamson and Associates, Inc. ("FW&A")
on behalf of:

Chouteau Telephone Company, an Oklahoma ILEC
H&B Telephone Communications, Inc., a Kansas ILEC
Moundridge Telephone Company, Inc., a Kansas ILEC
Pine Telephone Company, Inc., an Oklahoma ILEC
Pioneer Telephone Association, Inc., a Kansas ILEC
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC
Twin Valley Telephone, Inc., a Kansas ILEC
(Collectively, "ILECs")

BACKGROUND

The ILECs represented by FW&A are small rural incumbent local exchange carriers providing service in Oklahoma and Kansas. The ILECs have an interest in the outcome of this proceeding because they are all rate of return carriers subject to the jurisdictional separations process.

SUMMARY OF FW&A COMMENTS

FW&A and the ILECs it represents believe that the Joint Board and Commission must follow two paths - one for price cap LECs and a differing path for smaller rate of return ILECs. It is critical that rate of return ILECs maintain the current freeze and adopt an extended freeze (Option 1), until they are no longer dependent on jurisdictionally separated costs in either jurisdiction to establish rates and earnings levels or universal service funding levels. Price cap LECs should be given the opportunity to transition to Option 7.

THE SEPARATIONS FREEZE MUST BE MAINTAINED FOR RATE OF RETURN ILECs

There is a broad consensus among the parties filing comments that it is premature to consider revising the recently implemented separations freeze, in particular for rate of return ILECs. Most of the parties filing comments recommend continuing the current jurisdictional separations freeze indefinitely or for the five-year period ending July 2006, originally specified by the FCC.[1] FW&A agrees with these comments. Reasons for maintaining the freeze for rate of return ILECs discussed by the commenting parties are:

- It: "…allows sufficient time for evaluation of the various issues surrounding the separations factor freeze…" and provides: " …much needed simplification and stability to the separations process in a time of rapid market and technological changes. "[2]
- Changes to the separations freeze potentially will impact a rate of return ILEC's "…ability to earn a reasonable return on investments…" and the "…ILEC's ability to fund infrastructure investments, deploy advanced services, or even meet their obligations as Eligible Telecommunications Carriers…"[3]
- "…the elimination or restructure of separations would disrupt the regulatory stability and certainty needed by rural telephone companies if they are to continue

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[1] JSI at page 14 ("…JSI recommends that the FCC reject many of the options discussed in the glide path proposal and continue with the current jurisdictional separations freeze."); GVNW at page 4 ("We believe that for rural companies, the five-year period [of the freeze] should be utilized to determine how best to evolve and modify the existing system…"), information in brackets added for clarity; Home at page 6 ("…the paper is premature at this point…"); TCA at page 5 ("TCA recommends that the Commission not adopt a 'glide path' to the end of separations at this time or at the end of the current separations factor freeze in 2006. Instead, TCA recommends the Commission adopt the Paper's Option #1 and extend the factor freeze…"); Western Alliance at page 10 ("…the Commission should declare that it will not undertake the elimination or radical restructuring of separation, as proposed in the Glide Path Paper…"); The Associations at page 5 ("…the Associations believe that there is ample time available for such collaboration, since the separations freeze is in effect until July 2006."); USTA at page 2 ("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."); Sprint at page 2 (" The wisest approach to separations at the moment is to extend the freeze and re-evaluate the situation when the industry has stabilized, competition has developed, and reform can be comprehensive."); BellSouth at page 3 (" If the Commission has not abolished separations altogether by June 30, 2006, it should adopt Option #1..."); Verizon at page 1 (" …the Commission should continue with the current freeze until it is prepared to phase out the separations process.").

[2] JSI comments at page 4. See also CC Docket 80-286, DA 00-1865.

[3] GVNW comments at page 3.

making the investments necessary to offer new services and maintain existing service quality."[4]

- "…reforms in the separations process must not harm rural consumers….changes in the way costs are allocated and/or recovered between the jurisdictions can have drastic impacts on local rates and service availability in rural areas….time will be needed to assimilate the effects of recent and already-planned changes in rate-of-return (ROR) carrier rules and regulation [the MAG plan]."[5]

It is clear, based on the issues raised by several of the commenting parties and FW&A in its comments, that a continuation of the freeze until July 2006 is essential for rural LECs. This will preserve their ability to maintain existing facilities and services and provide advanced infrastructure and services to their customers that are, more often than not, in rural areas. There is a tight linkage between the results of the separations process for rate of return ILECs and the revenues that fund the infrastructures and services they provide. The jurisdictional separations-based costs of these ILECs are used for a number of purposes that have a major effect on the financial health of the company and its ability to provide high quality local exchange and other services at reasonable and affordable rate levels. First, the State Universal Service Funds and to some extent, the Federal Universal Service Funds[6] that are received by these ILECs, are based on jurisdictionally separated costs. Second, the overall interstate and intrastate rates and earnings levels of these ILECs are based on jurisdictionally separated costs. Third, these ILECs are participants in the National Exchange Carrier Association (NECA) pool and receive revenue from this

[4] Western Alliance comments at pages 1 and 2.

pool based on their interstate jurisdictional cost assignments. Consequently, any major change in jurisdictional separations, even on a transitional basis, could significantly affect the revenue streams of these companies and adversely affect their ability to provide existing and enhanced services at reasonable rates to customers in the high cost areas that they serve. This result would contravene goals contained in the Act which state that regulatory agencies should establish specific, predictable and sufficient mechanisms to preserve and advance universal service and that consumers in all regions of the nation, including rural, insular and high cost areas, should have access to telecommunications and information services at rates that are reasonably comparable to rates charged for similar services in urban areas.

The freeze of separations factors for rate of return ILECs is intended to provide predictability and stability in a period of regulatory, technological and market uncertainty. This frozen jurisdictional allocation provides a reasonable allocation of costs between the Federal and Intrastate jurisdictions. The FCC should not introduce any change to the freeze that will disrupt this predictable and stable allocation prior to July 2006 and FW&A recommends that for rate of return ILECs, the freeze be extended (Option 1) beyond that date.

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[5] The Associations at pages 3 and 4, information in brackets added for clarity.
[6] Federal long-term support and local switching support were based on jurisdictionally separated costs.

PROPOSED CHANGES TO SEPARATIONS PROCEDURES FOR RATE OF RETURN ILECs ARE UNNECESSARY, HAVE PREVIOUSLY BEEN REJECTED OR ARE PREMATURE

A few of the commenting parties proposed changes that would affect (a) the jurisdictional allocation of costs or (b) costs which are subject to jurisdictional separations for rate of return carriers. The Commission should reject these proposals because they have been thoroughly evaluated and rejected in the past. They would also introduce significant and unnecessary uncertainty regarding federal and intrastate revenue levels and thus cause uncertainty as to whether investments in new services and technologies should be started or continued.

A. Comments of the People of the State of California and the Public Utilities Commission of the State of California (CPUC):

The CPUC focuses its comments on Option 4 (redesign of separations to account for packet switching and competition) and Option 5 (facilities-based separations). The CPUC believes that these options: "…are the only viable options for separations reform." The CPUC urges: "…the FCC to consider these two options for a more focused debate and to fully elaborate on the specific details of how the FCC plans to implement them in the near future."[7] The CPUC apparently believes that Option 1

[7] CPUC comments at page 3. Additionally, TCA at page 4 of its comments indicates that it: "…believes there is merit in the Paper's Option #4…", even though TCA recommended that the FCC adopt Option 1.

(extending the freeze) is an inadequate policy response to the changing technological, economic, legal, jurisdictional and political climate.

FW&A does not believe that there is any justification for this extensive re-working of jurisdictional separations. Beginning in 1980, when CC Docket No. 80-286 was initiated, the Commission and Joint Board has repeatedly examined and reexamined the separations procedures, (including those in the Glide Path paper), in an attempt to develop jurisdictional separations procedures that are appropriate for new technologies and services and to deal with the continually changing economic, legal, jurisdictional and political climate.[8] Allocation procedures for loop, local switching and transport investments as well as the other investments and expenses have been changed and then changed again (and again in some cases), in pursuit of the "technologically and economically" correct allocation that also gave the "politically" correct balance of costs assigned to and to be recovered from the interstate and intrastate jurisdictions. The CPUC argues that this continual reexamination of separations procedures should be continued, apparently in pursuit of the unattainable goals of a separations process that "accurately" assigns all of a company's costs to the jurisdictions based on usage (minutes of use and/or packets and/or photons, etc.) and "correctly" assigns the appropriate level of costs to each jurisdiction.

[8] The CPUC notes that these Options have already been examined by the Joint Board and FCC when it states that: "California has already submitted comments and reply comments in this docket on three occasions in the past five years and those comments have addressed most of the 'glide path' options." CPUC comments at page 3.

At odds with the CPUC's comments, FW&A does not believe that it is necessary to attempt to reflect the allocation of each new technology or service based on a direct measure of its use. This attempt at "extreme nicety" in allocations, proposed by the CPUC, would result in costly and time consuming Joint Board and FCC proceedings which could devise complicated allocation procedures that yield no greater accuracy than the current frozen allocations. FW&A agrees with Verizon that:

> "The proposed alternatives to separations (i.e., Options 2 through 6) would recreate more complicated and costly processes than the current freeze. Any such 'reform' would undermine the policy goal of the freeze – to stabilize and simplify the regulatory process – and would likely become rapidly outdated as the telecommunications landscape continues to change."[9]

FW&A also agrees with Sprint's comments that continuing the separations freeze will prevent solutions that are continually: "…plagued by perpetual reworking…and prevents the [continued] misallocation of costs associated with dial-up Internet traffic to the state jurisdiction…"[10] The current frozen allocation of costs provides a reasonable assignment of costs to the Federal and State jurisdictions for rate of return ILECs and should not be reworked or revamped before July 2006, and should be maintained subsequent to July 2006.

B. Comments of Alaska Communications Systems, Inc. (ACS):

FW&A agrees with ACS' views regarding the inappropriate jurisdictional assignment of ISP Internet-bound traffic by the FCC[11] and the lack of clarity in the Separations Manual regarding specific allocation procedures for packet switching as well as ATM networks

[9] Verizon comments at pages 1 and 2.
[10] Sprint comments at page 4, information in brackets added for clarity.
[11] ACS comments at pages 4 to 6.

and SONET rings, etc[12]. The freeze will, to some extent, ameliorate the effects of this incorrect assignment of ISP Internet-bound traffic and will provide a reasonable jurisdictional allocation for new packet based and high-speed, high-capacity transmission technologies.

FW&A does not agree with ACS' "interim" proposals – revision of the 25/75% loop allocation and adoption of "SMOU" (switched minutes of use) rather than "DEM" (dial equipment minutes) as the local switching allocator.[13] As ACS makes clear, their objective is simply to assign additional costs to interstate that it argues should not be recovered through additional increases to end-user charges, but through additional universal service support.[14] While arguing that jurisdictional separations is not a universal service mechanism, ACS puts forth proposals that would, in effect, cause through changes to the jurisdictional allocation procedures, a significant increase in either end user charges or the Federal Universal Service Fund. The changes proposed by ACS have been debated and rejected numerous times in the last twenty years in CC Docket No. 80-286. These changes, if seriously considered and adopted by the FCC, would in fact result in instability in ratemaking in both jurisdictions and be at odds with the goal of predictability and stability sought by most of the commenters in this proceeding. FW&A is not aware of any new facts that would cause the Joint Board or the Commission to reexamine these proposals. Consequently, the Joint Board and the Commission should reject the proposals made by ACS.

[12] Id., at page 7.

C. Comments of Verizon:

Verizon proposes that "…new broadband investment – which is occurring in an already competitive marketplace – should be deregulated and removed from the separations analysis. In areas other than broadband, the Commission should continue with the current freeze…".[15] Verizon's broadband proposal is premature in this proceeding. The FCC is currently considering broadband requirements in CC Docket No. 01-337, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services. If the FCC were persuaded that broadband services should be deregulated for price cap LECs in CC Docket No. 01-337, then the FCC would subsequently modify the separations rules for price cap carriers to remove those costs. For rate of return carriers, Verizon's comments are misplaced. The market for broadband services in the high cost, largely rural areas that rate of return carriers serve, does not have substantial, if any, broadband competition. Further, the facilities necessary to deploy broadband services in rural areas (such as packet switching, fiber optic cable and circuit equipment), would continue to be necessary and substantially used for the provision of other regulated services such as local exchange and switched access. Consequently, even if the FCC were to deregulate broadband services and costs for price cap LECs, these services and costs should not be deregulated for rate of return LECs. Deregulation of broadband services for rate of return LECs would create unwarranted complexities and may have significant financial consequences, especially for small rate of return LECs. Deployment of broadband services in high cost rural areas may be significantly impeded if the FCC were to order deregulation of these services for rate of return LECs.'

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[13] Id., at pages 6 and 7.

ELIMINATION OF SEPARATIONS MAY BE APPROPRIATE FOR PRICE CAP LECs

In their comments, BellSouth, SBC and Verizon indicate that the separations should be eliminated. BellSouth argues that separations procedures "…impose unnecessary and asymmetric regulatory burdens on local exchange carriers."[16] SBC argues that "…the jurisdictional separations process will distort the market by sending improper pricing signals and maintaining regulatory arbitrage opportunities…. there is no longer a role for separations in the ratemaking process."[17] It is clear that these price cap LECs are commenting from the point of view of large price cap LECs for which separations-based costs may no longer have any meaning. FW&A believes that the Commission should seriously consider Option 7 for price cap LECs, assuming they meet at least the criteria discussed by FW&A in its comments. In summary those criteria are:

- Rates for the LEC must be set in each jurisdiction (Federal and State) in a study area, on a basis other than jurisdictionally separated costs.
- Rate changes for a low-end adjustment, if based on jurisdictionally allocated book costs to determine if the LEC's earnings are below the low-end rate of return, would not be allowed.
- Rate changes for the LEC based on exogenous jurisdictionally allocated book cost changes, would not be allowed.
- Federal or State universal service funding would not be based on jurisdictionally allocated book costs of the LEC in the study area.

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[14] Id., at page 4.
[15] Verizon comments at page 1.
[16] BellSouth comments at page 2.

- Confiscation claims by the LEC based on jurisdictionally allocated book costs would not be allowed.

If these criteria are met, there is no longer any "policy" requirement for separations for the price cap LEC. As FW&A discussed in its comments and as BellSouth correctly observes, "…the elimination of jurisdictional separations does not eliminate the power of state or federal regulators to pursue the broad policy objectives expressly authorized by state and federal statute…".[18]

CONCLUSION

For rate of return ILECs, most parties agree that the current separations freeze should be continued, at least until July 2006. Adopting any option other than Option 1 results in change for the sake of change. Adoption of Options 4 or 5, as proposed by the CPUC, will result in little benefit for consumers and companies will experience negative consequences in terms of implementation costs and the disruptions caused in rates, tariffs, settlements and revenue streams, including Federal and State Universal Service Fund distributions. The changes proposed by ACS have been rejected numerous times in this Docket and should be rejected by the Commission. The Verizon proposal to deregulate new broadband costs is premature and is not appropriate for rate of return LECs. FW&A believes (as do most of the commenting parties) that a continuation of the freeze is the

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[17] SBC comments at pages 1 and 3.
[18] BellSouth comments at page 3.

only option that satisfies the goals articulated by the Commission and as such, the Commission should maintain the freeze, at least until July 2006.

FW&A continues to believe that the Commission may consider allowing price cap LECs an exemption from separations requirements (Option 7), only if jurisdictionally separated costs are not utilized to set rates, determine earnings levels, or determine universal service funding levels by regulators in either jurisdiction in a study area in which the LEC operates. Even though it may have this exemption, a price cap LEC would still be subject to all other applicable Federal and State rules and guidelines governing its operations, including alternative regulatory rules governing rates, tariffs, earnings, and universal service funding, consumer protection, service quality, etc., until it is deregulated.

Respectfully submitted on behalf of the ILECs by,

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March 1, 2002