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Dirk Kempthorne
Governor

May 27, 2004

Honorable Michael K. Powell, Chairman
Honorable Michael J. Copps, Commissioner
Honorable Kevin J. Martin, Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Federal-State Joint Board On Separations, CC Docket No. 80-286

Dear Chairman Powell and Commissioners Martin and Copps:

We are writing to you as the State Members of the Federal-State Joint Board on Separations to describe for you our proposal regarding Separations Joint Board activities in the coming months and years. As you know, on May 22, 2001, the Commission released an order establishing a five-year interim freeze of the Part 36 separations process.¹ That freeze will end on June 30, 2006. We believe it is critical that the Separations Joint Board begin now to prepare for the end of the freeze.

We released the "Glide Path" paper in 2001,² and we held an *en banc* hearing in February, 2002 on the issues it raised. In the paper we explored several possibilities for post-freeze separations policy. The simplest option was to extend the freeze beyond 2006, but several of the remaining options would have made material changes to separations policy. Even extending the freeze would require some evaluation before it could be implemented; the other options would require substantially more preparation and work.

We have reviewed the procedures needed to implement a post-freeze policy. Working backwards from the end of the freeze, it appears the FCC would need to release a substantive order no later than March of 2006. This would allow the affected carriers a

¹ Jurisdictional Separations and Referral to the Federal-State Joint Board, CC Docket No. 80-286, Report and Order, FCC 01-162, released May 22, 2001.

² Common Carrier Bureau Seeks Comment 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, released December 20, 2001.

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limited time to prepare and file any necessary tariffs prior to the end of the freeze on June 30, 2006. This time will be particularly important if the freeze is adjusted or replaced. To allow time for FCC notice, comment and deliberations, the Joint Board would likely need to issue a Recommended Decision no later than July, 2005. Allowing nine months to seek comments, gather and review data, then discuss and draft a Recommended Decision, it would appear the Joint Board would need to issue a notice requesting comments and information no later than October of this year. It will probably take several months to draft the notice, so that process needs to start now.

This timeline schedules all required steps in the limited time available between now and June 30, 2006. It may be overly optimistic, however, given the complexities of the issues and the potential for material changes in policy. Time is tight even if we choose the simplest option, that of extending the existing freeze. If we wish to consider modifying the freeze or moving in other directions that reflect changes in the telecommunications marketplace, we may already be too late to avoid at least a brief freeze extension. We conclude that the "post-freeze" planning process needs to start immediately.

To begin, the Joint Board needs to prepare and issue a data request to find out what the carriers are doing under the freeze – e.g., to find out how carriers are allocating certain costs and expenses and where they are recording or booking certain costs, expenses, and revenues - and to determine what is, and is not, working. We propose to begin drafting that data request immediately.

In this connection, we note that the Joint Board's data-gathering process could be helped by the adoption of certain accounting measures proposed by the Joint Conference on Accounting in its "Recommendation By Joint Conference" filed October 9, 2003, in WC Docket No. 02-269. The Joint Conference recommended, among other things, the addition of certain accounts and subaccounts to the Commission's Part 32 rules. The Commission published the joint conference recommendations on December 23, 2003, and has received public comment on them, but has not yet acted on the recommendation. It appears the additional accounts and subaccounts will provide important information for the FCC and this Joint Board to consider, so we urge the Commission to act on the Joint Conference recommendation soon.

It may also be appropriate to publish an updated version of the Glide Path paper for public comment. Some of the comments filed in response to the original paper indicated it was too early to begin evaluation of the freeze; that should no longer be a concern.

In order to consider these procedural proposals, we intend to have a meeting of the State Members of the Joint Board in conjunction with the NARUC Summer Committee meetings in Salt Lake City, probably on the afternoon of July 14, 2004. At that meeting, we intend to consider a proposed data request that state staff is preparing. We invite federal staff participation in developing this request. We will also further consider a

more formal schedule of events that will bring us to the end of the freeze in an orderly manner. We invite your participation at that meeting.

We would like to follow the Salt Lake City meeting with a meeting of the full Joint Board in the Washington, DC, area, some time before the end of the current federal fiscal year – i.e., before October 1, 2004.

It is critical that we hold both meetings because it appears likely that a number of matters currently pending before the Commission may require referral to the Joint Board in the near future. As you are aware, 47 U.S.C. § 410(c) requires referral of "any proceeding regarding the jurisdictional separation of common carrier property and expenses between interstate and intrastate operations...." Several current topics - including, by way of example, intercarrier compensation and Voice Over the Internet - seem to involve jurisdictional separations and cost allocation issues.³

There is also an urgent need to discuss both the funding and the expenditures of the Joint Board. As you know, we recently held a separations tutorial for the new state members in Indianapolis, Indiana, which was almost entirely funded by the states because the Commission expressed reluctance to expend about half of the combined Joint Board budget on the tutorial. We can only assume that the Commission was reserving that money for a regular Joint Board meeting, which should be held during the current federal fiscal year. Therefore, with this letter we are asking that the FCC Commissioners on the Joint Board propose one or more Joint Board meeting dates in August or September. If there is a desire on the part of FCC Commissioners and staff to meet in the Washington, DC, area, our preliminary analysis shows there could be a considerable savings on both hotel prices and airfare if the meetings were to be held near the BWI or Dulles airports, rather than in Washington, DC, itself.

While we are on the subject of funding, we must express our concern regarding (a) the Commission's recent decision to reduce the combined Joint Board budget (at a time when the Commission's overall budget was increased) and (b) our inability to use that budget in an efficient manner. The Indianapolis tutorial is an example of the problem. When we attempted to arrange the tutorial using the FCC's travel guidelines, the estimated cost was just over half of the total budget for both Separations and Universal Service Joint Board travel. However, if we had been able to make our own travel arrangements, based upon commercially available hotel and airline prices posted on various travel-related web sites, we determined it would have been possible to hold the tutorial for a fraction of the FCC's estimated cost. If the combined Joint Board funding is to remain at the current low level, then we must use our portion of that combined funding as efficiently as possible. With that goal in mind, we would like to explore with you other funding options, such as the possibility of using NARUC to administer our limited FCC expense funding.

³ This list of issues for discussion and referral is illustrative and is not meant to be exhaustive.

This funding issue is particularly important because of the likely need for referrals of a number of matters currently pending before the Commission to the Joint Board in the near future, consistent with 47 U.S.C. § 410(c) and as noted above. If we are to consider the complex separations and cost allocations issues before us in a timely manner, we must have adequate resources and use them efficiently. We would like to discuss the need for adequate funding and for efficient use of such funding with you, as well.

Clearly, there is a lot to be done and not a lot of time to do it. While we intend to discuss many of these questions in Salt Lake City, we should not wait until July to get started. If possible, we would like to schedule one or more conference calls between the State Members and the FCC Members of the Joint Board to discuss some of the procedural issues. We understand that it may not be possible for all FCC Members to participate at the same time, but we are more than willing to schedule multiple calls so that we can speak with each of you individually, if necessary.

Sincerely,



Paul Kjellander
State Chair of Federal-State Joint Board and
President, Idaho Public Utilities Commission



Diane Munns
Chair, Iowa Utilities Board



Judith Ripley
Commissioner, Indiana Utility Regulatory Commission



John Burke
Board Member, Vermont Public Service Board