

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**COMMENTS OF
ALEXICON TELECOMMUNICATIONS CONSULTING**

I. INTRODUCTION

Alexicon Telecommunications Consulting (“Alexicon”) respectfully provides its Comments pursuant to the Federal Communications Commission (“FCC” or “Commission”) Order and Further Notice of Proposed Rulemaking (“Notice”) in the above-captioned matter adopted May 15, 2006 and released May 16, 2006¹. The Notice extended the Jurisdictional Separations freeze² that was set to expire June 30, 2006 and adopted a Further Notice of Proposed Rulemaking seeking Comments relating to reform of the jurisdictional separations process.

Alexicon provides financial, regulatory, and managerial consulting services to a variety of small³, rural/insular, independent, and tribal rate-of-return regulated telecommunications providers in twelve (12) states. All of Alexicon’s clients have some type(s) of ongoing requirements for annual jurisdictional separations studies. On their behalf, Alexicon has been and continues to be involved in a variety of jurisdictional

¹ FCC 06-70, Published in the Federal Register May 24, 2006

² Notice, footnote 2

³ Under the Regulatory Flexibility Act of 1980, as amended, they all have less than 1,500 or fewer employees, and are not dominant in their field of operations; 15 U.S.C. 632; and are further classified as Incumbent Local Exchange Carriers (“LECs”) providing less than fifty thousand (50,000) access lines.

separations activities⁴ affecting both interstate and intrastate jurisdictions. All clients rely upon the results of these annual jurisdictional separations studies not only for a wide variety of regulatory-related revenue recovery activities but also for internal management analysis (including Universal Service Funds (both federal and state) reporting and recovery; product pricing and offering decisions; various cost of service analyses; NECA pooling and annual pool option analysis; earnings analysis including state or tribal regulatory reviews; and a plethora of other regulatory and management analysis functions.

Alexicon and its clients applaud the Commission's timely actions in extending the current separations freeze and welcome the opportunity to provide our response(s) to the various proposals attached to the Notice⁵.

Alexicon will primarily direct its comments toward the small rate-of-return regulated companies whom it represents. In this context, Alexicon generally believes that the current jurisdictional separation process is providing sufficient, and efficient, reporting of cost and revenue allocations to allow regulators to meet their various jurisdictional statutory authority, as well as allow companies to comply with various Federal and State Rules and regulations⁶. These separations processes are generally utilized to apportion costs of various plant and expense categories between interstate and intrastate jurisdictions; which are then applied to prevent ILECs from recovering the same costs in both the interstate and intrastate jurisdictions⁷.

Alexicon supports the extension of the freeze of jurisdictional separations⁸ and further suggests that it is delicately intertwined and tied to more comprehensive reform of a variety of all other cost and revenue recovery mechanisms, such as the pending

⁴ Two clients are considered Average Schedule companies who rely upon the overall jurisdictional separations results of cost companies (more specific details follow in these Comments) to determine various access and Universal Service revenues. All other clients currently are required to perform annual jurisdictional separations studies as either members of the National Exchange Carrier Association ("NECA") pooling process or for other regulatory functions.

⁵ Separations Joint Board "Glide Path", December 6, 2001(Notice Appendix A); Separation Joint Board "Glide Path II", October 25, 2005 (Notice Appendix B); and the Draft Data Request (Notice Appendix C)

⁶ Including FCC Rules Parts:32, 36, 64, and 69

⁷ Notice, pp 2-4

⁸ As defined within the Order/Notice

proceedings affecting Intercarrier Compensation⁹; Universal Service Fund contributions and methodologies for assessment¹⁰; classification of Broadband Services and related effects to revenue reporting and cost recovery methods; and a wide array of Price Cap Companies' forbearance requests relating to Special Access Services.

Alexicon has and will continue to follow the 2001 Separations Freeze Order relating to the freeze of Part 36 category relationships (if applicable) and allocation factors for rate-of-return carriers¹¹ and agrees that this freeze has reduced regulatory burdens on carriers¹². Since the majority of the small rate-of-return carriers such as Alexicon's clients generally rely upon telecommunications consultants like Alexicon, we believe that the freeze has served a tremendous purpose in stabilizing and simplifying the current separations process and related reporting requirements.

II. RESPONSE TO SPECIFIC NOTICE QUESTIONS

A. Should the primary criteria for evaluating proposals for reform of separations rules continue to rely upon competitive neutrality, administrative simplicity and principles of cost causation?¹³

Alexicon believes that the initial underlying principals that led to this examination of separations reform are still valid. The issues of simplifying a process that can, and did, appear to become so overly complex and technical should continue to be a primary driver in the process. Further, changes to technology and the marketplace continue to dictate the need to review the jurisdictional separations process so as to allow the assessment of cost-benefit ratios with proposed changes or revisions to methodology or reporting. For the smaller rate-of-return carriers, their environment will continue to be primarily one that is basically local access in nature and made up of circuit and switch-based technology which still lends itself to the use of direct-assignment and "shortcuts" of

⁹ July 24, 2006 filing by NARUC of the Missoula Plan

¹⁰ WC Docket No. 06-122 and oft-discussed review/revision to the revenue-based contribution method of funding the USF

¹¹ Notice, footnote 19

¹² Notice, pp 8

¹³ Notice, pp 28

allocation method(s) to determine use and function of costs and investments. The current Voice over Internet Protocol (“VoIP”) technology for interexchange calling¹⁴ has certainly added a previously unexpected complication to the determination of interexchange and interstate/intrastate jurisdiction, but this does not necessarily affect either competitive neutrality or cost causation issues in the long run.

There have been definite benefits to these smaller rate-of-return carriers throughout the existing freeze period of efficiencies and cost savings (or containment of cost levels relative to jurisdictional separation studies preparation and presentation) that should act as some guideline toward the future review of reform suggestions or proposals. While competitive neutrality is an important aspect of any future reform proposals, we believe that this consideration should actually necessitate competitive carriers (especially those partaking of Universal Service Funding) to be required to substantiate costs similar to that done by ILECs and under similar rules and methodologies.

B. Is the Supreme Court’s holding of *Smith v. Illinois* still applicable in light of competitive market conditions?¹⁵

Alexicon supports the continuation (for rate-of-return carriers) of *Smith v. Illinois* principles. We continue to support the need for jurisdictional separation of costs and investment utilizing existing rules and methods. We do not expect that states would, on a wholesale basis, support the total elimination of separation of these costs and investments without imposing some alternative that well might be possibly more complex, expensive, and inconsistent in methodology than current Rules. In our experience many states currently rely upon the use of existing FCC Part 32, 36, and 64 rules to help establish intrastate apportionment of rate base and expense recovery calculations in a variety of intrastate revenue, earnings, and rate-of-return proceedings. We also note that the existence of the NECA pooling process can only be accomplished utilizing some type of jurisdictional separation process (for both average schedule and cost companies¹⁶).

¹⁴ In lieu of existing circuit-based “conventional” interexchange provider toll calling utilizing the Internet as the means of call interexchange transmission

¹⁵ Notice, footnotes 62 & 63

¹⁶ NECA utilizes the results of cost company (rate-of-return) jurisdictional separations studies as the underlying basis to develop its filings for Average Schedule Company cost recovery components

C. Is there a continuing need to prescribe separations rules for rate-of-return companies?¹⁷

As previously stated, Alexicon continues to support jurisdictional separations for rate-of-return companies for a range of reasons related to consistent and efficient compliance with state and interstate regulatory authorities. Without these rules it would be generally impossible to accurately assess the “regulated” earnings, or allowable cost and investment base of rate-of-return companies, on a consistent basis. The application of jurisdictional separations rules provides a uniformly accepted method for various regulatory bodies to accurately determine regulated jurisdictional earnings. At the same time, separations rules provide uniform applications that companies understand will be utilized in these review processes. Furthermore, this system currently allows and defines a systemic method of how companies are to maintain books and records for accounting purposes that are consistent between various jurisdictions (federal and states).

D. Does Alexicon believe that existing separations procedures, including study areas, Part 36 categories and apportionment of costs among Part 36 categories and jurisdictions, and Part 36 rules have become obsolete or require reform?¹⁸

At the current time, Alexicon generally continues to support existing Part 36 and Part 64 Rules. Alexicon contends that usage and function are still the underlying principles of identifying jurisdiction. Since those principles are still applicable in any given telecom-related circumstance (as there will always be issues surrounding authority and jurisdiction), separations rules are very relevant. We are also supportive of existing Part 36 “study area” definitions and their use, recognizing that study areas play an important role in rate-of-return regulation and franchised service areas. In addition, as it relates to merger and acquisition activity, study areas currently bifurcate or set boundaries between price cap and non-price cap territory. As rate-of-return regulation was founded on the principle of cost recovery, Alexicon believes study area applications are still relevant and important.

¹⁷ Notice, pp 28

¹⁸ Notice, pp 28

As previously stated, unless and until there is comprehensive reform of all federal regimes (Intercarrier Compensation, Universal Service, Regulation of Broadband, etc.), Alexicon believes that there has been no demonstrated benefit toward elimination or wholesale modification of jurisdictional separations relating to the small rate-of-return carriers. In other words, the phrase “If it ain’t broke, don’t fix it” is currently applicable and we contend that in fact there is no empirical evidence suggesting that, for small rate-of-return ILECs, anything that indicates that the existing jurisdictional separations regime truly requires any type of massive “fix” is inappropriate.

The only major issue that we have concern about in any “unfreeze” scenario relates to the possible presumption of the use of traffic studies to determine basic usage of the Public Switched Telephone Network (“PSTN”) for development of what are considered “basic study factors”. Previously these were accomplished by analysis of to/from calling of the local access lines utilizing inherent switch, transmission, and route analysis programs. The calculations were based using to/from NPA-NNX (area code and exchange identifier digits) from local exchange access lines that in the new VoIP environment are often not assigned, nor utilized, in the traditional PSTN network.¹⁹ This can create many anomalies that could render the result of traditionally-developed traffic studies to be invalid or skewed. Because of this possibility, and the related unresolved technological issues involved, we continue to advocate continuation of the separations freeze as it pertains to traffic studies/basic studies pending any comprehensive or final resolution of the entire issue of jurisdictional separations.

III. Response to GLIDE PATH papers²⁰

A. Glide Path Paper- December 6, 2001

Alexicon contends that since it has been nearly five (5) years since the issuance of this paper, and that in this period a multitude of technology and marketplace revolutions have

¹⁹ So-called virtual NNX assignments that do not necessarily follow traditional geographic assignment do not provide “accurate” analysis of to/from locations. This is also complicated by the increasing “stripping” of call origination data on interexchange calls

²⁰ Notice, Appendix A & B

taken place, we will confine our comments primarily to the newly issued Glide Path II paper.

There are, however, several basic tenants outlined in the original Glide Path paper²¹ that are still guiding principles in the ongoing discussion process relating to jurisdictional separations. We believe that there is a continued need for jurisdictional separations in an effort to: continue to develop meaningful relationships between costs and prices for rate-of-return companies; simplify the process; recognize new technology and changing marketplaces; and recognize jurisdictional differences and ratemaking preferences and mandates. We do not agree that there is reduced importance to accurately reflect cost allocations or continuing to obtain “contribution” to loop costs from interstate services. To these ends, we will then focus on the Glide Path II Paper.

B. Glide Path II Paper²²

Alexicon concurs with several of the underlying theories expressed in the Technology Changes, Economic Changes and Legal Changes²³ espoused in this Paper, but also suggests that the effects on small rate-of-return ILECs may not be anywhere near as severe as upon the larger price cap ILECs. We therefore suggest that this may well indicate the need for a “split” regime, or solution, differing for price cap versus rate-of-return carriers.

1. Post Freeze Options.

A. *Option #1-Allow the Freeze to Expire*

No longer in consideration²⁴

B. *Option # 2-Extend the Freeze*

Selected by the FCC in the Order and Notice

²¹ Notice, Appendix A, II Broad Questions pgs 7-8

²² Notice, Appendix B, October 25, 2005

²³ Notice, Appendix B, pgs 4-8

²⁴ Order and Notice extended the freeze

C. *Option # 3-Use Fixed Factors*

Alexicon does not support this option. It is not a practical solution and merely will require future updates on some arbitrary basis as technology, marketplace and pricing options²⁵ change in the future. We also believe this approach would cause a contentious and generalized proceeding to set factors. This would seem to once again create a potentially bifurcated system of factors utilized either between price cap and rate-of-return companies or between large and small companies. This type of solution does not appear to comport to the broad goals of this paper.

D. *Option # 4- Use Fixed Rates and Residual Ratemaking*

Alexicon is perplexed by the comparison of this approach to existing “average schedules” since, as previously stated, average schedules are currently computed utilizing the results of jurisdictional separations studies (enhanced by special additional analysis) from rate-of-return “cost companies”. This then becomes some type of a circular, non-logical proposal. It also sets the stage to force all companies to become some type of price cap regulated entity, eliminating current options for rate-of-return regulation and cost recovery.

E. *Option # 5- Coordinate Separations Changes With Universal Service and Inter-carrier Compensation Changes.*

As previously stated in these comments, this is the approach that Alexicon supports. It is the most logical way to globally review, and potentially resolve, a wide range of issues affecting ILECs, Competitors, Consumers, Interexchange Carriers, VoIP and Internet Service providers, Regulators (inter and intra state), Legislators, etc. While some piece-parts of this approach are currently under review, we believe that some type of joint conference²⁶ may be the appropriate method to begin such a proceeding. Until there is resolution of all issues, Alexicon would support a continued freeze of the current jurisdictional separations process (at least for small rate-of-return regulated ILECs).

²⁵ Including shifts from item pricing, or plans, to what are called bundled pricing plans and options. These rapidly eliminate or blur the capabilities to assess or evaluate cost-causer/cost- payer ratios, etc.

²⁶ As suggested in Notice, Footnote 23

F. *Option #6-Eliminate Separations*

Alexicon believes that this Option is premature given our support of Option #5. We do not believe that all states would support this solution, leaving many companies to continue providing jurisdictional separations studies to state regulators (or tribal authorities). This might become a hodge-podge of methods, rules, or accounting requirements that become much more cost and time intensive than existing uniform Federal Rules.²⁷ We further believe that under existing case law, both federal and state(s) would require changes to accomplish this Option, again an exercise that would be lengthy, costly (to many parties), unwieldy, and yield an uncertain outcome. For these reasons, we do not believe that separations is no longer necessary in a particular market or for a particular carrier.²⁸

IV. DATA REQUEST

Alexicon generally supports the proposed data request and believes that most information requested already exists within carriers' jurisdictional separations studies. We support companies, or their designated agents, as being the preparers and submitters of this data due to the technical, specific, and comprehensive nature of the data likely to be requested.

There are, however, a range of questions that occur to us, mainly concerning use, "scrubbing for accuracy", and availability of data collection results rather than the requested data itself. Some of the questions/concerns are:

- We are concerned about confidentiality issues regarding this data, especially related to competitive market issues.
- Who would be reviewing or compiling the responses?
- How would companies be compensated for production of this data (NECA has recently eliminated direct assignment of these type costs from Pool recovery)?
- How, to who, and where would compiled data be available?
- Who and how would the data be scrubbed and verified for accuracy?

²⁷ FCC Rules Part 32, 36, 64, 69, etc.

²⁸ Notice, Appendix B, pg 15

- What level of company management might be responsible to certify and transmit this data?
- Would this be a recurring request if no immediate action is taken utilizing this data and it becomes stale?
- What does “bundled packages²⁹” have to do with jurisdictional separations reform?

V. OTHER NOTICE ISSUES

A. Emergence of New Technology³⁰

Alexicon believes that the effects of emerging technology have and will continue to have created a need for ongoing technical review of jurisdictional separations principles and methods. One thought would be to assimilate procedures pertaining to specific technology and/or methods to act as a guide and issue resolution in the process to help accommodate emerging technology in a format inclusive of regulators, companies, other service providers, and the like. All the items mentioned (UNEs, DSL service, private lines and Internet) each affect the separations process and must be recognized in any future reform effort.

B. Local Competition³¹

On behalf of Alexicon’s clients, we believe that there will continue to be rate-of-return requirements/opportunities for small ILECs regardless of competition. There have been limited true competitive marketplace pressures on these smaller rural ILECs compared to that placed on the larger carriers and we see no need for comprehensive reform of separations rules for this reason. As previously stated, we would support the application of existing jurisdictional separations rules on competitive carriers who wish to draw upon Universal Service Funds. We also believe that continued use of jurisdictional separations rules allows regulators to review cross-subsidy allegations and continue existing price and rate-of-return regulation for the small ILECs.

²⁹ Notice, Appendix C, pgs 30-31

³⁰ Notice, pp 33

³¹ Notice, pp 34

C. Universal Service³²

Alexicon agrees that any “permanent” revision of jurisdictional separations requires revisions to calculations of Universal Service Fund cost allocation rules. This is an additional reason that we advocate comprehensive reform of Intercarrier Compensation, Universal Service, and Separations Reform in a consolidated proceeding.

D. Special Access³³

Alexicon has no opinion regarding price cap special access rates and the effect upon them with the separations freeze.

V. CONCLUSION

Alexicon again applauds the Commission for both the jurisdictional separations freeze extension and for this Further Notice. As discussed, Alexicon supports continuation of the existing freeze until a comprehensive review, and/or potential overhaul, occurs that collectively addresses Intercarrier Compensation, Universal Service Fund issues, and Jurisdictional Separations as they relate to small rate-of-return regulated ILECs. We further support ongoing Federal-State Joint Board and NARUC efforts to continue dialogue while seeking long-term solutions for the multitude of issues facing the telecommunications industry. On behalf of our clients, we will continue to be involved in this process and look forward to seeking solutions and developing rational alternatives to these vital issues.

Respectfully Submitted,

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³² Notice, pp 35

³³ Notice, pp 36