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

In the Matter of	)	
	)	WC Docket No. 07-52
Broadband Industry Practices	)	
	)	

COMMENTS of

ALEXICON TELECOMMUNICATIONS CONSULTING

Alexicon Telecommunications Consulting ("Alexicon") hereby submits its Comments in the above captioned matter contained in the Notice of Inquiry ("NOI").[1] In this NOI the Federal Communications Commission ("FCC") requests Comment on various questions related to assist in their understanding of the market for broadband and related services: whether platform providers and others favor or disfavor particular content?; how consumers are affected by these policies?; and whether consumer choice of broadband providers is sufficient to ensure that all such policies ultimately benefit consumers?[2]

I. General

Alexicon provides management, financial and regulatory consulting services to a variety of small rate-of-return regulated Incumbent Local Exchange Carriers ("ILECs").[3] These ILECs provide telecommunications services in rural, insular and tribal areas and range in size from single wire-center operations to medium and larger sized multi wire-center companies. All of these companies currently provide customers within their certificated territories with access to a variety of telecommunications services from Basic

[1] FCC 07-31, Adopted March 22, 2007, and Released April 16, 2007.
[2] NOI, para. 1.
[3] As defined by the 1996 Telecommunications Act; each providing less than fifty thousand (50,000) access lines

Exchange/traditional voice service(s)[4] to Broadband/Internet Access and other Advanced Telecommunications Services.

These companies, and many other similarly situated ILECs, have invested and continue to invest substantial funds to provide their customers these services (equivalent to those provided in urban areas) with the help of various state and federal high-cost fund programs, and at comparable prices. Consistent with FCC rulings, these companies provide "broadband transmission service(s)" as regulated telecommunications services while additional Internet access and other Advanced Services are typically provided as information or non-regulated services.

Most of Alexicon's client companies (and most ILECs in general) provide their transmission-component broadband access service by utilizing the National Exchange Carrier Association ("NECA") federally approved tariff while others provide their own company-specific tariff.[5] While these companies directly provide their customers with both transmission and "non-transmission" services, Internet access services are almost exclusively provided by separate subsidiaries, joint-ventures, or other ILEC affiliated operations.

Alexicon and its client companies have been advocates of, and continue to support, the 2005 FCC Policy Statement.[6] We have especially been concerned with the marketplace leverage and content disparity between the so-called large Internet providers and the abilities of the smaller ILECs to gain comparable access to both content and Internet access[7] for their consumers. As smaller ILECs, these subject companies usually provide their customers with alternatives to Internet access of the larger national Internet service providers either through affiliates or in joint ventures with other ILECs (often when the larger Internet access providers do not provide for local access or in some cases provide limited service(s)).

[4] Which comport to all requirements of the FCC required and specified for Universal Service support.
[5] Broadband service/Internet-access is classified as an interstate service and subject to FCC jurisdiction/regulation.
[6] NOI, footnotes 1-3, and NOI para. 2
[7] Including various speed, price and availability options that often are offered only in mostly urban areas or to the customers of the larger Internet service providers

Furthermore, there has been an increasing interest by smaller ILECs to utilize broadband transmission services for the provision of IPTV.[8] In these IPTV operations the overriding concern of the ILECs has been their ability to gain access to sufficient content at reasonable prices to provide customers with desired channels, features and options. Increasingly, ILECs are aspiring to add this IPTV service as a vital component to the so-called "service bundle" of features and services which consumers find increasingly desirable, and which ILECs deem as a necessary tool for customer attraction and retention.

While we are not advocating greater FCC, or State, regulation of IPTV service,[9] we believe that the FCC must consider issues related to IPTV as equally important to prior concerns related to Internet access and/or neutral access to Internet content. We believe that future uses of broadband services will be more focused on a new and expanded variety of consumer-centric services beyond current Internet access and related content service(s). The same packet technology that is utilized for transmission of data over the Internet has such a wide range of potential uses for the provision and creation of currently unforeseen services and functions that we suggest the FCC not get too fully focused only on today's Internet, but rather that today's Internet should be considered a base upon which to create and support policies that will allow continued innovation in the consumer-driven broadband marketplace.

Alexicon also notes that there are a variety of uses for regulated broadband transmission,[10] such as DSL, Special Access, ISDN and uses for Fiber-to-the-Curb/Fiber-to-the-Home, that are mainly data-centric and not necessarily considered Internet or Internet access. We believe that it is important not to focus too narrowly on the Internet itself when deliberating broadband but rather allow policies to be developed as current and future technologies morph into new and different consumer products and services. If the United States is to be a leader in penetration and deployment of broadband then there

[8] Broadband-based Internet Protocol Digital Television service, similar to existing CATV services, but with expanded channel options and service features
[9] Beyond recent legislative and regulatory actions related to easing, or eliminating, franchise restrictions of incumbent CATV providers
[10] In excess of 200kbps service as currently defined

must be an environment created in which experimentation of service, feature, and pricing (as well as transmission media) must be encouraged and not "overly regulated." This attitude must be accompanied by federal policies that strongly encourage, or ultimately mandate, open access to transmission of broadband by all parties willing to abide by regulatory, legal and financial requirements of the transmission provider.

Alexicon contends that some, if not most, of the reasons that the United States lags behind many other nations in broadband deployment relate to current limitations on services, content and price policies. In addition, lack of consumer education on the use, convenience, and efficiency that broadband provides as well as control of a majority of Internet access services by a few concentrated providers (led by several large telecommunications service providers) tends to hinder broadband deployment.

II. Specific NOI Questions

A. What are today's packet management practices[11]?

Alexicon's clients are not gateway controllers and therefore they do not participate in packet management. ILECs provide the "telecommunications component" and it is their customers (Internet access and/or data service providers) who are capable of packet control. We are aware of products and services that are capable of such packet control but cannot specifically pinpoint their use in the marketplace. We understand the *potential* need for service providers to consider the use of packet control and believe that it can be a valid service option.

Alexicon supports use of packet control or screening as a potential parental control function but only as a feature of the "service provider" and not the "transmission service provider." We also have concerns related to national security issues that might also affect packet management but again believe these relate to the "service provider" not the "transmission service provider."

[11] NOI, para. 8

Finally, Alexicon continues to be concerned that any packet management *must* be provided on a neutral basis. Service providers (while not directly regulated by the FCC) will require some legislative or future regulatory oversight to ensure that marketplace neutrality is enforced if there is to be actual neutrality.

B. Pricing practices for broadband and related services[12]?

Alexicon's clients currently do have different tariff rates and charges for various broadband speeds (i.e. clients using NECA's tariff and clients having company-specific tariffs). We believe that this practice reflects both cost-of-service and value-of-service concepts. Alexicon's clients support various pricing policies that recognize service use (amount of data or time of facility use) and priority access. We do not support additional regulatory actions to further intrude into the pricing policies of "non-transmission services or providers" except for continuation of access/pricing neutrality policies. We do not support any pricing or access discrimination practices of current or future providers to end users.

Service providers should not be prevented from giving consumers *options* to gain additional bandwidth or specialized processing. These options generally are currently available, under approved tariffs or via special authorized contracts, from the "transmission service providers" and should be allowed (or not prohibited) for "service providers." These pricing options, and others, will ultimately be required if the United States is to catch up with other nations in broadband penetration. The marketplace must be allowed a "light handed" form of any regulation if there is any hope of future growth of broadband deployment. Alexicon supports broadband access neutrality, but not further "broadband service(s) regulation." Market forces must be allowed freedom of service feature and price innovation if continued economic growth is to occur.

[12] NOI, para. 9

C. Should the Policy Statement be amended[13]?

Alexicon contends that *at the present time* the existing FCC Policy Statement[14] and 47 U.S.C. 230 (b) components are sufficient and do not require modification or addition. We, as previously noted, are most concerned with continued "neutrality of access" issues and nondiscrimination. As a representative of smaller ILECs, compared to marketplace dominant large Internet access providers, we are well aware of the potential for abuse and have noticed similar actions by a variety of content providers in the media content arena. Furthermore, technology and service feature/pricing in the marketplace are changing so rapidly that an attempt to further capture these in formal regulatory policy statements will always lag reality, or act to impede innovation. We believe that existing civil legal remedies and/or legislative/regulatory remedies are sufficient to ensure nondiscrimination of access neutrality rather than trying to add policy language as a potential solution.

D. Does the Commission have the legal authority to enforce the Policy Statement[15]?

Alexicon believes that the FCC has limited authority to enforce aspects of the Policy Statement. Many service providers of broadband services and features are not FCC regulated entities and therefore it is highly unlikely that courts would support any actions that the FCC might attempt to enforce Policy Statement components. Clearly the FCC has authority over "transmission service providers" and through the Universal Service Fund Schools and Library programs to enforce Policy Statement components as related to entities therein. Competition in the marketplace will, by itself, be a major influence in being a sufficient mechanism toward ensuring compliance with the Policy Statement.

In our opinion, any expansion of the Policy Statement would not "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."[16] We believe that an unfettered marketplace will provide the best opportunity to achieve the promise of broadband and Advanced Telecommunications Services in this country. In our opinion, if one compares the United States to other

[13] NOI, para. 10.
[14] NOI, footnotes 1& 2.
[15] NOI, para. 11
[16] NOI, para. 11

countries, it will reveal that those countries with greater consumer broadband use are limiting regulatory involvement in the process and encouraging innovation in services, features and pricing. For example, *Europe Reports* states that competition itself will drive broadband and convergence services.[17] In addition, "Strong growth has been recorded across most mobile markets…" and "strategies [for increasing broadband and convergence services] include encouraging migration to postpaid plans, differentiated tariff plans and encouraging mobile data and content usage."[18]

III. SUMMARY

Alexicon respectfully submits its Comments and commends the FCC for its continuing efforts to explore issues affecting broadband deployment in our country. As previously stated, our current primary concerns focus on two issues:

- Net Neutrality policies and nondiscrimination of broadband access by all consumers
- The ability of all service providers (including smaller ILECs) to access content on a nondiscriminatory basis

Alexicon has observed the tremendous expansion of both broadband/Advanced Telecommunications Services and content-related Internet access providers in rural, insular and tribal areas in the past several years. Clearly the smaller ILECs have invested considerable resources, financial and otherwise, to meet marketplace needs of their customers in this arena. We note that many of our client companies, and similar ILECs, plan to continue further participation in the upcoming wireless expansion of broadband services and also will involve themselves in IPTV operations.[19] Their ongoing major concern relates to the ability to secure content on an equal nondiscriminatory basis so that their customers are given continued choices of provider and pricing options.

[17] www.budde.com.au/publications/annual/europe
[18] Ibid
[19] Both those that currently provide traditional CATV services and those not currently providing video services. IPTV services provided over fiber or upgraded copper facilities generally are more efficiently economical to provide in rural/insular areas as opposed to the provision of historical coaxial-based CATV service

We suggest that future Advanced Telecommunications Services will be developed with greater bandwidth and data processing speeds than is currently being utilized. This combination holds the promise, if priced at consumer-acceptable levels, to enhance the use of existing and new facilities that are capable of providing consumers with world-class broadband services. Alexicon, and its clients, encourage the FCC to continue its exploration of broadband issues but to limit regulatory intervention in the marketplace.

Respectfully submitted,

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