In the Matter of

Universal Service Contribution Methodology

WC Docket No. 06-122

COMMENTS OF
ALEXICON TELECOMMUNICATIONS CONSULTING

I. INTRODUCTION AND POSITION SUMMARY

Alexicon Telecommunications Consulting ("Alexicon") hereby submits its Comments in response to the Federal Communications Commission ("FCC" or "Commission") Notice of Proposed Rulemaking ("Notice") in the above captioned matter adopted June 21, 2006 and released June 27, 2006.\(^1\) The Notice proposes to amend the existing approach for assessing contributions to the federal universal service fund ("USF" or "Fund") by raising the interim wireless safe harbor to 37.1 percent and by establishing universal service contribution obligations for providers of interconnected Voice over Internet Protocol (VoIP) service. Furthermore, the Notice is issued to determine what additional steps, if any, should be taken to ensure the sufficiency and stability of the Fund.\(^2\)

\(^1\) FCC 06-94; Published in the Federal Register July 10, 2006
\(^2\) Notice, pp 1-4
Alexicon provides management, financial and regulatory consulting services to a variety of small\textsuperscript{3}, rural, independent, and tribal telecommunications providers in twelve states. Alexicon’s clients range from single wire center companies to more complex providers with multiple wire centers. All of Alexicon’s clients are dependent upon the existing flow of funds from the Federal USF and most are contributors to the Fund\textsuperscript{4}, which ensures that the rates for local access services to their rural and insular customers remain at affordable levels when compared to more urban areas\textsuperscript{5}.

The flow of monies from the Fund has allowed rural carriers to continue to invest in the vital infrastructure of the Public Switched Telephone Network ("PSTN") and to provide their customers with the widest range of telecommunications services comparable to those that are available in urban and metropolitan areas of the country. Alexicon applauds the current actions of the Commission as necessary immediate steps to provide stability and continued predictable Fund cash flow. Alexicon also believes that additional timely steps will be required in the near future to allow small ILECs the opportunity to continue receiving the full amount of sufficient and adequate USF funding, as provided in Commission Rules and Regulations, and consistent with the intent of the Telecommunications Act of 1996\textsuperscript{6}.

\textsuperscript{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 further are Incumbent Local Exchange Carriers (ILECs) providing less than fifty thousand (50,000) access lines.
\textsuperscript{4} Consistent with Section 254 (d), 47 U.S.C. 151 (1996 Telecommunications Act) with the exception of any who qualify for the \textit{de minimus} exemption
\textsuperscript{5} Section 254 (b), 47 U.S.C.151 (1996 Telecommunications Act)
\textsuperscript{6} Sections 254 (b)(5), 254 (b)(3) and 254 (b)(2)
Alexicon concurs that these interim steps will “minimize the impact of any changes on consumers” and that “…the Fund Administrator and the Commission should be able to continue to detect inconsistencies in the information filed by contributors, as well as conduct contributor audits as necessary.” All-in-all we agree that these proposed interim changes are probably some of the most expeditious and efficient means to continue the current regime of Fund contribution collections without a wholesale revamping of the existing revenue-based assessment methodology.

II. Response to Specific Notice Questions

A. Elimination or Revision of the Wireless Safe Harbor

1. Can mobile wireless providers determine their actual interstate and international revenues?

Alexicon is of the understanding, based upon its interactions with mobile wireless providers in a variety of state-specific regulatory activities, that there are a variety of valid and not necessarily complicated, nor expensive, methodologies that could be utilized by the wireless carriers to attain actual interstate and international revenues for Fund contribution calculations. Many of these revenue analysis methods are no different than those that are currently being utilized by the carriers to enable them to adequately comply with a vast array of complex taxing authority codes, thereby requiring these
carriers to specifically identify the “jurisdiction” of calls. We also generally agree with
the Verizon suggestion\textsuperscript{11} that call detail records, etc., are some specific methods to help
develop and determine reasonable proxy methods for revenue allocation(s). There is also
a number of existing actual traffic study methodologies that could be utilized to
specifically analyze a wireless carriers’ percentage of interstate and international calling
and allow for the development of logical revenue allocation(s). Many of these traffic
studies are currently conducted on an ongoing basis to allow wireless carriers to engineer
switch and circuit configurations necessary for adequate customer access to both the
PSTN and the wireless carriers’ own network.

2. Without safe harbor, could NPAs be utilized to identify interstate and
   international revenues\textsuperscript{12}?

In Alexicon’s experience the use of NPAs is normally a reliable and a statistically valid
method to determine interstate and/or international location of a called party from either
wireline or wireless originated calls. There are some instances, due to the increased use
of so-called virtual NPA or NNX (telephone access line exchange identifier code) where
these indicators are not wholly reliable,\textsuperscript{13} but as a general rule these identifiers can be
utilized for location purposes.

\textsuperscript{11} Notice, footnote 214-re;pp 23-33
\textsuperscript{12} Notice, pp 66 and footnote 215
\textsuperscript{13} In many cases associated with certain customer options provided by VoIP service providers and certain other
alternative Internet-based toll providers
3. Could cell sites be used to determine the jurisdictional nature of a call\textsuperscript{14}? 

Based upon the wide variation of cell site/radio/network arrangements that Alexicon has dealt with, we do not believe that this method would be a reliable determinant for call jurisdiction purposes. Furthermore, radio frequency transmission, unlike landline telephony call transmission, does not depend upon or “respect” geographic boundaries; it therefore is not generally considered as a reliable location tool.

4. Would it be necessary to analyze both incoming and outgoing calls\textsuperscript{15}? 

Alexicon believes that primarily the outgoing calls should be those measured and analyzed, although the nature of wireless billing plans in which both outgoing \emph{and incoming} calls impact customer billing may make it necessary to analyze both.\textsuperscript{16} To further complicate this response, it appears that in many instances, dependent upon the specific routing path of an incoming call, sufficient identifier information is not in the call record.\textsuperscript{17} Therefore the incoming call may not contain sufficient billing/location identifiers to be utilized for analysis purposes.\textsuperscript{18} We believe that the analysis of outbound calls could serve as the reasonable surrogate in the call jurisdiction/revenue analysis process.

\textsuperscript{14} Notice, pp 66
\textsuperscript{15} Notice, pp 66
\textsuperscript{16} Not all wireless carriers bill for BOTH outgoing and incoming usage, so analysis of both type calls may not always be necessary
\textsuperscript{17} Specifically dependant upon the type and number of PSTN tandem switches the call traverses, and the specific interconnection arrangement(s) of the calling and called parties carriers.
\textsuperscript{18} This lack of detail, or purposely stripped call detail, has been the subject of much telephony industry debate and discussion for several years, with allegations of illegal/unethical arbitrage and potential fraud considerations aimed at a variety of conventional interexchange carriers and VoIP service providers.
5. Would there be specific costs and difficulties of implementation of these alternatives to safe harbor\textsuperscript{19}?

There are always going to be claimed costs and alleged difficulties whenever there are proposed changes to any current methodology, such as changing from a safe harbor calculation method to anything else. In our opinion the more appropriate question is: do the benefits of the proposed change outweigh the costs/difficulties? These can only be best addressed by both the affected parties who must make the changes and those who would benefit from the change. In this case both wireless providers and the Commission itself, including its Fund administrators, would be required to change existing calculation, verification and contribution collection methodologies.

Part of the answer is also impacted by consideration of the timeframe for which the changes will apply. Alexicon believes that in this instance, one should be cognizant of the pending change from the current revenue-based Fund contribution to some other form of different contributor-neutral method of Fund assessment and collection. If this review and/or potential major contribution change is contemplated soon, then one must temper the need for any immediate drastic change in contribution calculation methodology (e.g. safe harbor to actual calculation) in a more moderate light considering contributor recalculation costs and other similar factors involved in such a change.

\textsuperscript{19} Notice, pp 66
6. If safe harbor is retained, is the 37.1 percent appropriate, or should it be raised\(^{20}\)?

Alexicon would tend to support a minimum interim continuation of the 37.1 percentage if the safe harbor methodology is retained. However, based on the FCC’s recent Order related to the Regulation of Prepaid Calling Card Services (FCC 06-79), Alexicon sides with the Commission’s statement, “…we believe a 50 percent default factor will provide the necessary incentive for carriers to comply with the PIU reporting requirements. At the same time, given the likelihood that prepaid calling cards will be used primarily for interstate and international calls, we find that a default presumption that 50 percent of traffic is jurisdictionally intrastate is more reasonable than GCI’s proposal that transport providers be permitted to assume that 80 percent of traffic is jurisdictionally intrastate.”\(^{21}\)

While the parallel between prepaid calling cards and wireless calling patterns is not identical, Alexicon believes the two different calling options resemble each other enough to propose a 50% safe harbor percent for USF contribution methodology.

7. If retained, how could the safe harbor percentage more accurately reflect wireless market conditions\(^{22}\)?

If safe harbor were to be retained beyond an additional year, Alexicon believes that future analysis periods to assess market conditions must be reviewed on at least a semi-annual basis. The recent history of wireless replacing, or supplanting, wireline telephony as a customer-preferred method for toll calling alternatives (due to either expanded calling areas or price packing options) shows no signs of abating. Therefore, percentages utilized for current safe harbor calculations clearly will continue to change rapidly. It

\(^{20}\) Notice, pp 67
\(^{21}\) WC Docket No. 05-68, para 36
\(^{22}\) Notice, pp 67
will not suffice to continue the efforts employed by the Commission since 1998 of only making two changes to the safe harbor percentage prior to this Notice. The closer the Commission sets any safe harbor percentage to actual market conditions, the more accurate and contributor-neutral the Fund contributions and sufficient collections will be. The marketplace is moving too quickly to merely rely upon lagging data to establish contributors’ fair share to Fund collections. It is these inequities, or perceived inequities, of the Funds’ contribution base that are often at the heart of multiple attacks upon the Fund, its size and its recipients that have been launched in recent years.

B. USF Obligations of VoIP Providers

1. What are possible ways to improve VoIP provider contribution requirements?
Alexicon is troubled by any methodology which treats VoIP providers differently than any other interexchange service provider. We recognize the rapid technological advances that have made the ever-increasing use of VoIP provider services available to the general public, but are troubled by any suggestion that somehow these calls made via the VoIP provider, and their associated revenues, are intrinsically different from calls handled by other providers. We recognize the difficulty that has plagued the Commission

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23 Notice, footnote 218
24 Notice, pp 68-69
25 Notice, pp 68
26 Even though the VoIP provider utilizes the long-haul transmission of interexchange calls via the Internet versus the traditional interexchange carriers’ use of its more traditional wireline transmission facilities (wired or wireless), the PSTN and ILECs facilities are still utilized in the customers’ call. These ILEC facilities are those supported via the current USF Fund.
in its search for a correct classification of these providers\textsuperscript{27} and the appropriateness of their contributing to the Fund.

We are not convinced that the treatment of VoIP traffic being subject to a safe harbor percentage of anything other than 100% adequately treats these revenues for Fund contribution purposes on a fair and equitable basis. Absent quantifiable data, such as traffic studies, user data and the like, we believe than any safe harbor percentage is, at best, some type of “guesstimate” and must be quickly replaced by a more supportable method. While we applaud the Commission for starting to require Fund contributions from VoIP service providers, we respectfully request that a more data-based contribution method be established if this current proposal is allowed to be utilized for more than one year beyond its inception. We fully support more precise avenues for determining the jurisdictional nature of VoIP providers’ revenues\textsuperscript{28}.

2. **How could safe harbor, or other revisions, be calculated\textsuperscript{29}?**

As previously stated, Alexicon does not favor retention of a safe harbor methodology for the long term (beyond approximately one year after the implementation of the current proposal). We do, however, recognize the potential issues involved in both creating actual traffic/revenue studies of VoIP providers and the associated audit and verification process that would be entailed if traffic studies were a method upon which revenue jurisdiction calculations were to be based.

\textsuperscript{27} Notice, Footnotes 48, 49 & 55; Notice pp 13-15
\textsuperscript{28} Notice, pp 54-57
\textsuperscript{29} Notice, pp 69
We recognize that currently there is much concern, and little if any consistent regulatory guidelines, associated with the issues of “virtual number assignment\(^{30}\)” that appear to be endemic with VoIP-enabled service providers. The use of these virtual NNX assignments negates the ability of any traffic study to correctly identify the accurate and true user location, thereby negating any logical analysis of call/revenue jurisdiction within such studies. This issue, and that previously mentioned of a fairly rampant interexchange carrier industry practice of stripping call detail record information from calls, adds to the complexity and overall reliability issues necessary for the independent verification of any VoIP provider traffic study for use in lieu of a safe harbor percentage for Fund contribution calculation(s).

We would therefore suggest that if the safe harbor methodology is retained it must be updated on a regular basis. We suggest that quarterly updates, based upon overall industry traffic analysis be the basis for ongoing safe harbor revisions. The use of overall industry jurisdictional revenues, if regularly updated, provides a more accurate reflection of any safe harbor percentage as opposed to initially setting it at the proposed 64.9 percent without any ongoing review and/or adjustment.

\(^{30}\) Where the customer (end-user) of VoIP service can request assignment of any local exchange identifier (NNX) for use with their VoIP-enabled service regardless of the actual NNX that would normally be assigned to the service by the local exchange telephone company. This so-called virtual assignment causes problems for E911 identification purposes and in rating an actual interexchange call (true distance) compared to traditional NNX assignments.
III. CONCLUSION

As previously stated, Alexicon applauds the Commission for issuance of the Order and Notice, and its related “interim reforms.\textsuperscript{31}” We believe that these revisions, while urgently required on a timely basis, are not the only necessary long-term sufficient and sustainable changes that will allow the ongoing operation of USF funding. It is clear with the rapid technological advances and service-provider innovations that have occurred in the telecommunications arena in the past ten years that the current entire universal service regime needs a comprehensive review. As well-noted in this Notice\textsuperscript{32} there are many forces at play affecting the continuation of the revenue-based contribution methodology that has been employed to establish the current predictable and sustainable Fund.

There are a plethora of revenue-affecting changes that have occurred since the Fund was established. The rapid market share advances of wireless and VoIP providers—which, while significant, are just some of the items that continually degrade the ability of the revenue-based contribution methodology to be an ongoing competitively-neutral, and inherently fair, method of determining contributors and their contributions to the Fund.

The rapid and widespread consumer-acceptable proliferation of the so-called “service bundling” concept\textsuperscript{33} has made it virtually impossible to accurately calculate the so-called jurisdictional allocation of revenues received from the consumer without the use of some

\textsuperscript{31} Notice, pp 22
\textsuperscript{32} Notice, pp 3-4
\textsuperscript{33} Where a variety of services such as local telephone, long distance calling, optional service features and often Internet or Video is provided a monthly discounted flat-rate.
(often arbitrary) allocation process. Since these allocation processes vary widely between service providers and sometimes within various branches of a provider, it becomes a nearly impossible task to empirically report and accurately reflect (to say nothing about audit/verify capabilities) the reporting of jurisdictional revenues on a consistent basis. This leads to wide variations in the revenue reporting process as well as the subsequent contribution requirements of the various entities involved in the USF process. Furthermore, it creates opportunities for gaming the system, outright fraud, and a variety of misreporting, or non-reporting, of revenues and related contributions to the Fund. These activities then place greater contribution burdens on other service providers, and cause instances leading to creation of mistrust among Fund contributors and added audit/verification activities to the Commission and its Fund Administrator.

The increasing explosion of pricing plans that provide consumers with flat-rated interexchange calling plans - versus the previous method of “distance sensitive per minute” charges - have further blurred the lines for the reporting of jurisdictional revenues. These types of plans are increasing, are offered by both wireline and wireline companies, and in certain instances may include the overall bundling of local and “interexchange/long distance” services. To further complicate the issue, the consumer may have various choices of monthly bundled minutes that they pay for if used or not. This ultimately results in the questionable jurisdictional allocation of revenues related to the unused, but paid-for, blocks of time.
Additionally, the overall service-provider industry is continually developing new and modified services or uses for a given service. This often affects contributions to the Fund. It has been a major effort for the Commission to continually monitor or detect these services or modifications such as in the recently issued Declaratory Ruling and Report and Order affecting Prepaid Calling Card Services.34 Prior to this Order, there has clearly been various attempts to abdicate responsibility for Fund contributions by various service providers.

Alexicon continues to advocate that ANY service provider who utilizes any portion of the PSTN in its offering(s) to customers must be responsible for contributions to the Fund. To this end we respectfully urge the Commission to expeditiously convene a proceeding to examine alternatives to the current revenue-based contribution methodology. We believe that it is in the best interest to both contributors and recipients that such a comprehensive review begin as soon as practical. While we are keenly aware of various Congressional committee proposals, and potential 1996 Act rewrites or revisions, we urge the Commission to take the lead, hopefully including the Federal-State Joint Board, in beginning the overdue process in moving to a more sustainable and equitable method of Fund contribution.

Respectfully Submitted,

Alexicon Telecommunications Consulting
2055 Anglo Drive, Suite 200
Colorado Springs, CO 80918

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34 FCC 06-79, WC Docket No. 05-68, Adopted June 1, 2006; Released June 30, 2006