



Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
The National Exchange Carrier Association, Inc.) CC Docket No. 80-286
Petition for Waiver of Section 36.2(a)(3))
of the Commissions Rules.)

COMMENTS OF JOHN STAURULAKIS, INC.

John Staurulakis, Inc. (JSI) hereby files these comments in response to the May 14, 1998, Public Notice, DA 98-909 (Public Notice), related to the National Exchange Carrier Association, Inc. (NECA) petition for an interim waiver of section 36.2(a)(3)¹ of the Federal Communications Commission (FCC, or Commission) rules filed on behalf of the members of its traffic-sensitive access charge pool.

JSI is a consulting firm specializing in financial and regulatory services to more than two hundred Incumbent Local Exchange Carriers (ILECs) throughout the United States. JSI assists these ILECs in the preparation and submission of jurisdictional cost studies and Universal Service Fund (USF) data to NECA, and routinely prepares and files tariffs with the Commission on behalf of a number of these ILECs. Since the Public Notice seeks comments on issues affecting our clients in matters of cost recovery, JSI is an interested party in this proceeding.

I. JSI Supports NECA's Petition, and Requests the FCC to Extend Its Applicability to JSI Clients Filing Their Own Interstate Access Tariffs

JSI supports NECA's efforts to seek an interim waiver of the Commission's *actual use* principle, as provided for in section 36.2(a)(3) of FCC rules,² as it applies to the development and use of usage-based apportionment factors in the separations process. JSI also formally requests that the Commission extend the applicability of the request for an interim waiver to include JSI clients that file their own interstate traffic-sensitive tariffs under provisions of the FCC's Part 61.38 and/or Part 61.39 rules.³

JSI shares NECA's concern that "continuing growth in Internet traffic, with its emphasis on data transmission, and disproportionately long holding times, is causing unintended consequences in separations results." Indeed, JSI contends that even a rudimentary understanding of the relative-use principles underlying the application of usage-based factors in the separations process, coupled with an awareness of the Internet's phenomenal growth,⁴ is sufficient for one to grasp the potential impact of the Internet on cost recovery. With Internet usage increasing exponentially over the past several years and with the majority of that access being provided via the LEC's local calling scope, JSI believes that jurisdictional shifts are inevitable, leading to significant upward pressure on local rates. Such a result is contrary to the mandate Congress included in the Telecommunications Act that "the Commission and States should ensure that universal service is available at rates that are just, reasonable and affordable."⁵

In addition, JSI agrees with NECA's position that " absent definitive Commission action on the proper treatment of Internet traffic for separations purposes, significant variances may occur in the manner in which Internet traffic is classified."⁶

JSI bases its concern and conclusion on the fact that, by and large, our clients are rate-base, rate-of-return regulated for intrastate purposes and consequently are afforded an opportunity to recover their costs and earn a return on their investment.⁷ Therefore, if Internet traffic were to continue to be classified as local in nature, as some contend it should be and as NECA's Cost Issue #5.5 mandates,⁸ there will be a tremendous increase of intrastate usage which will cause a shift of costs from the interstate to the intrastate jurisdiction. This shift would place significant upward pressure on local rates.⁹

II. Actual Use and Other Fundamental Principles of Cost Recovery

While JSI readily acknowledges that *actual use* has long been a fundamental principle of separations,¹⁰ it is not the sole principle affecting cost recovery, nor should it be viewed in isolation. The history of cost recovery - separations and settlements - is full of examples of the Commission, NARUC-FCC committees, and Joint Boards tempering the *actual use* principle with procedures designed to achieve their overall objectives, including preventing large jurisdictional shifts of costs and maintaining reasonable local service rates.

The Commission and various Joint Boards have been particularly sensitive to the issue of the application of "actual use" as it applies to small telephone companies. The judicious tempering of this principle often recognized the need for rural telephone companies to depend to

a larger extent on access-based cost recovery in order to maintain reasonable local rates. It is not unusual for a typical small telephone company to derive as much as 60 percent to 80 percent of its regulated revenues from access (including Long Term Support and Local Switching Support), while the regional Bell operating companies (RBOCs) typically derive no more than 20 percent to 30 percent from access-related services. Much of this variance is due to the difference in the geographic areas served by rural companies, which requires a greater dependence on the toll network for essential services, and to the unique cost recovery procedures applicable to the smaller telephone companies.

Examples of the Commission's tempered *actual use* principle were particularly evident during the earlier post-divestiture era. In the 1986-87 time period, the FCC adopted, among other things, a flat allocator for non-traffic-sensitive costs and a loop-based universal service support mechanism. This was followed by collapsing eight separate central office equipment categories to four, and conforming the separations process to the new Part 32 Uniform System of Accounts. Moreover, the Commission instituted four separate transitional mechanisms to ensure that jurisdictional revenue neutrality would be maintained: a limit on change in interstate allocation - Part 36.154(f); an eight-year phase-in of the 25 percent Gross Allocator - Part 36.154(d); an eight-year phase-in of the universal service expense adjustment - Part 36.641; and a five-year phase-in of the local switch weighting factor - Part 36.125.

A more contemporary example of the FCC's willingness to consider jurisdictional impacts over other fundamental principles is an entire series of recent FCC decisions regarding universal service. Although it acknowledged the Telecommunications Act's guiding universal service principles - including, Section 254(b)(5), the desirability of "specific and predictable support mechanisms" - the FCC nonetheless made explicit provisions to support the unique treatment of rural telephone companies for universal service purposes. The FCC's position regarding the potential impact on rural telephone companies is evident from the transitional rules it applied to them through at least the year 2000, as well as its reversal of the Joint Board's decisions to freeze historical levels of support and to eliminate support for multi-line business lines, and second and additional lines, when it became evident that these actions would undermine universal service for rural telephone companies.¹¹

III. NECA's Waiver Request Pending Comprehensive Separations Reform Is Needed to Prevent Jurisdictional Shifts That Could Affect Universal Service

The tremendous potential financial impact of this proceeding on LECs, in general, and on rural telephone companies, in particular, underscores the reasonableness of NECA's proposal of an interim waiver of section 36.2(a)(3). By holding rural companies apart from the ongoing changes in the Access Reform and Universal Service proceedings, the Commission has already signaled its acknowledgement of the significant potential consequences of its actions in implementing the Telecommunications Act.

In addition, the tenuous nature of the Internet issue - and the merit of NECA's waiver request - has been indicated by the Commission's own tentative conclusion that there are, in fact, applications of Internet service that may properly be classified as the provision of telecommunications services - and, therefore, assignable at least in part to the interstate jurisdiction. In its April 10, 1998 Report to Congress, CC Docket 96-45, (beginning at paragraph 83), the FCC addressed Internet Protocol (IP) telephony. The Commission concedes that, at least as it applies to "phone-to-phone" applications - involving both voice and facsimile transmission - IP telephony should arguably be classified as the provision of a telecommunications service, rather than an information service. Thus, the providers of such service would potentially be subject to similar obligations as those imposed on interexchange carriers, including "contributing to universal service mechanisms, paying interstate access charges and filing interstate tariffs."

JSI believes that the FCC's comprehensive analysis of Internet usage in the course of separations reform will likely lead to its concluding that other aspects of Internet, similar to those of IP telephony, also require usage to be classified as interstate in nature. Therefore, an interim freeze of the usage-based apportionment factors until such comprehensive review is complete will be far less disruptive on access cost recovery and universal service than allowing such interstate apportionment factors to significantly decrease - if Internet traffic is to continue to be treated in the interim as local - or alternatively, to allow the interstate traffic apportionment factors to dramatically increase - if Internet traffic is to be treated in the interim as interstate.

We claim that the continued growth of Internet traffic necessitates that the Commission grant NECA's interim waiver of section 36.2(a)(3) of the Commission's rules, if significant jurisdictional shifts are to be avoided.

IV. Conclusion

For the reasons stated and in light of the significant financial disruptions that rural telephone companies can expect from the jurisdictional shift caused by Internet apportionment in the separations process, JSI requests that the FCC approve NECA's waiver request. In addition, JSI requests that the FCC extend the effect of the waiver to JSI clients on whose behalf we file interstate access tariffs.

Date: June 4, 1998

Footnotes

¹ This application would include factors applicable to all categories of central office equipment, information origination and termination equipment, and cable and wire facilities for which usage-sensitive factors would apply in accordance with Part 36 rules.

² 47 CFR 36.2(a)(3).

³ Part 61.38 is applicable to ILECs that choose to file an interstate access charge tariff based on prospective cost and demand data. Part 61.39, often referred to as the "small company filing rules," is applicable to ILECs serving less than 50,000 access lines that have chosen to file their rates on historical cost and demand data.

⁴ According to a recent report published by the U.S. Department of Commerce, Internet traffic is doubling every 100 days. ("The Emerging Digital Economy," April 15, 1998.) This report confirms independent assessments that Internet traffic is growing at triple-digit rates. (Matthew Gray, "Network Wizards," 1996; and "EMMS Internet Business Statistics," Telecommunications Reports International, Inc., 1998.)

⁵ See section 254(i) of the Act.

⁶ NECA Petition at 3.

⁷ Aside from being rate-base, rate-of-return regulated, all our clients are also Eligible Telecommunications Carriers (ETCs) with universal service obligations, including carrier-of-last-resort obligations throughout the area in which they serve. See section 102 of the Act.

⁸ NECA's Cost Issue # 5.5 stipulates that Internet traffic be classified as local traffic when an end user accesses the Internet Service Provider within the serving LEC's local calling scope.

⁹ In fact, the upward pressure will be on all intrastate rates. However, because most rural carriers primarily provide only local and access service, and because of existing pressures to reduce intrastate access charge rates, it is reasonable to expect that local service rates serve as the primary source for rate increases.

¹⁰ See NARUC-FCC Cooperative Committee on Communications April 1963 Separations Manual, that provides in section 11.211, "*Separations are made on the "actual use" basis, which gives consideration to relative occupancy and relative time measurements,*" and in section 11.212 that "*In the development of "actual use" measurements, measurements of use are (1) determined for telephone plant or for work performed by operating forces on a unit basis (e.g., conversation-minute-miles per message, traffic units per call) in studies of traffic handled or work performed during a representative period and (2) applied to overall traffic volumes, i.e., 24-hour rather than busy hour volumes.*" This language is identical to today's Part 36.2(a)(2) and 36.2(a)(3) language, respectively.

¹¹ May 8, 1997 FCC Report and Order in CC Docket 96-45, beginning a paragraph 291.

