

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

In the Matter of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications)	
Act of 1996)	
)	
Intercarrier Compensation for)	CC Docket No. 99-68
ISP-Bound Traffic)	
)	

**COMMENTS OF THE
ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES**

THE ASSOCIATION FOR LOCAL
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SUMMARY

ALTS contends that the Commission should rule that Section 251(b)(5) applies to dial-up ISP-bound traffic so long as the telephone numbers of the calling and called parties are otherwise in the same local calling area. Dial-up calls to ISPs, while jurisdictionally interstate, may and should be categorized as local traffic subject to reciprocal compensation. In the *ISP Recip Comp Order*,¹ the FCC retained jurisdiction over dial-up ISP-bound traffic. This conclusion was not vacated by the D.C. Circuit. The conclusion that was vacated was the conclusion that dial-up ISP bound traffic was exchange access traffic. There is no reason why dial-up ISP-bound traffic cannot be treated by the FCC as “interstate” for jurisdictional purposes and “local” for service categorization purposes.

The D.C. Circuit in its remand of the *ISP Recip Comp Order*² did not even question the FCC's jurisdiction over ISP-bound traffic. The question on remand is simply “whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs.”³ Based on the D.C. Circuit’s analysis of the nature of dial-up ISP bound calls, it seems clear that dial-up ISP-bound traffic cannot fit within the long distance model and fits squarely within the local call model. Thus, ALTS contends, and the D.C. Circuit supports the conclusion, that dial-up ISP-bound traffic

¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, FCC 99-38, 14 FCC Red 3689 (1999) (*ISP Recip Comp Order*).

² *Bell Atlantic v. FCC*, 206 F.3d 1 (D.C. Cir. 2000)

³ *Bell Atlantic v. FCC*, 206 F.3d at 5.

resembles other local calls, and, therefore, must be treated as all other local traffic and subject to reciprocal compensation.

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INTRODUCTION

The Association for Local Telecommunications Services (“ALTS”) hereby files these comments in response to the Public Notice released on June 23, 2000 by the Commission in the above-captioned proceedings. ALTS is the leading national trade association representing facilities-based competitive local exchange carriers (“CLECs”).

This matter is back before the FCC because the D.C. Circuit vacated the FCC’s determination that dial-up calls to ISPs are not local. According to the Court, the FCC had failed to explain why jurisdictional precedent had any application to the service category issue, where the correct issue is: “whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-

distance model of a long-distance carrier collaborating with two LECs.”⁴ The FCC has now requested public comments concerning the vacation and remand of its finding that ISP-bound traffic is access traffic. ALTS contends that the FCC will have to conclude in its remand that dial-up ISP-bound traffic is clearly local.

BACKGROUND

On February 26, 1999, the FCC released a Declaratory Ruling and Notice of Proposed Rulemaking to address the issue of inter-carrier compensation for the delivery of telecommunications traffic to an Internet Service Provider (ISP).⁵ In the *ISP Recip Comp Order*, the FCC determined that ISP-bound calls are not local calls subject to reciprocal compensation under FCC rules implementing section 251(b)(5) of the Act.⁶ Using an “end-to-end” analysis of these calls, the FCC concluded that ISP-bound calls do not terminate at the ISP’s local server, but instead continue to one or more Internet websites that are often located in another state.⁷ The FCC, therefore, found that ISP-bound calls are jurisdictionally mixed, largely interstate, and thus not subject to reciprocal compensation.⁸ The FCC also acknowledged that there was no federal

⁴ *Bell Atlantic v. FCC*, 206 F.3d at 5.

⁵ See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, FCC 99-38, 14 FCC Rcd 3689 (1999) (*ISP Recip Comp Order*).

⁶ *ISP Recip Comp Order*, 14 FCC Rcd at 3706.

⁷ *Id.* at 3695-3703.

⁸ *Id.* at 3690, 3695-3703.

rule establishing an inter-carrier compensation mechanism for such traffic or governing what amounts should be paid. In the absence of a federal rule regarding the appropriate inter-carrier compensation for ISP-bound traffic, the FCC held that parties were bound by their interconnection agreements as interpreted and enforced by state commissions.⁹ The Commission sought comment in the *ISP Recip Comp Order* on a federal inter-carrier compensation mechanism for ISP-bound traffic.

On March 24, 2000, the United States Court of Appeals for the D.C. Circuit vacated certain provisions of the *ISP Recip Comp Order* and remanded the matter to the FCC.¹⁰ The Court ruled that the FCC had not adequately justified the application of its “end-to-end” analysis in determining whether a call to an ISP is subject to the reciprocal compensation requirement of section 251(b)(5). The Court noted that (1) the FCC failed to apply its definition of “termination” to its analysis; and (2) cases upon which the FCC relied in its end-to-end analysis can be distinguished on the theory that they involve continuous communications switched by IXCs, as opposed to ISPs, which are not telecommunications providers. The court also found that a remand was required because the FCC did not provide a satisfactory explanation as to how its conclusions regarding ISP-bound traffic accord with the statutory definitions of “telephone exchange service” and “exchange access service.”

⁹ *Id.* at 3690, 3703.

¹⁰ See *Bell Atlantic v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

On June 23, 2000, the FCC released a Public Notice seeking comment on the DC Circuit's remand of the *ISP Recip Comp Order*.¹¹ The FCC now seeks comment on the issues identified by the court in its decision. In particular, the FCC asks parties to comment on the jurisdictional nature of ISP-bound traffic, as well as the scope of the reciprocal compensation requirement of section 251(b)(5), and on the relevance of the concepts of "termination," "telephone exchange service," "exchange access service," and "information access."

DISCUSSION

I. DIAL-UP ISP-BOUND TRAFFIC IS SUBJECT TO RECIPROCAL COMPENSATION.

A. Traffic May Be Jurisdictionally Interstate, But Local Service.

The FCC concluded in the *ISP Recip Comp Order* that: (1) dial-up ISP-bound traffic is jurisdictionally interstate;¹² and (2) dial-up ISP-bound traffic should be treated as an access service, not as an exchange service.¹³ The first finding was not appealed. The second finding was appealed and vacated. The D.C. Circuit phrased the issue for remand as follows: "whether

¹¹ See Public Notice, Comment Sought On Remand Of The Commission's Reciprocal Compensation Declaratory Ruling By the U.S. Court of Appeals For The D.C. Circuit, FCC 00-227, CC Docket Nos. 96-98, 99-68 (rel. June 23, 2000).

¹² The choice here was between jurisdictions (interstate vs. intrastate).

¹³ See *ISP Recip Comp Order*, n.87 (concluding that ISP-bound traffic is non-local interstate traffic).

a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs.”¹⁴

The relevant conclusion made by the FCC in the *ISP Recip Comp Order* was one of service categorization. The FCC decided that ISP-bound traffic was not local.¹⁵ This decision was enormously disruptive to the CLEC industry because it put into question whether CLECs could collect reciprocal compensation for dial-up ISP-bound traffic, the FCC having previously concluded that access traffic was not subject to reciprocal compensation. The FCC included language in its order saying that CLECs could still recover reciprocal compensation for dial-up ISP-bound traffic, and, in the absence of a federal rule, state commissions have the authority to determine inter-carrier compensation for ISP-bound traffic. The FCC conclusion, nevertheless, forced CLECs to re-litigate the issue before state commissions and federal courts and stymied CLEC-ILEC interconnection negotiations.

The conclusion that dial-up ISP-bound traffic was not local is the FCC conclusion that the D.C. Circuit vacated.¹⁶ The D.C. Circuit did not question the FCC’s ability to retain jurisdiction over dial-up ISP-bound traffic. This distinction is important because it is reasonable

¹⁴ *Bell Atlantic v. FCC*, 206 F.3d at 5.

¹⁵ “Local” is not a jurisdiction, it is a service category. The D.C. Circuit did not overturn the FCC’s conclusion on the jurisdictional nature of dial-up ISP-bound traffic.

¹⁶ While the DC Circuit did not explicitly conclude that dial-up ISP-bound traffic is local traffic, the Fifth Circuit appears to have so concluded. On March 30, 2000, the U.S. Court of Appeals for the Fifth Circuit affirmed a decision of the Texas Public Utilities Commission that modem calls within a local calling area to Internet service providers are “local” calls and therefore subject to reciprocal compensation obligations under agreements between incumbent local exchange carriers and competitive local exchange carriers approved by the Texas Public Utilities Commission. *Southwestern Bell Tel. Co. v. Public Util. Comm. of Texas*, No. 98-50787 (5th Cir. Mar. 30, 2000). In its opinion, the Fifth Circuit stated: “. . . we hold that the PUC’s determination that reciprocal compensation obligations encompass ISP-bound traffic does not conflict with the Act or with any FCC rule regarding such traffic.” Underlying the court of appeals decision as well as the decisions of the Texas PUC and a lower federal court is the

for the FCC to retain jurisdiction but follow the court's reasoning and categorize dial-up ISP-bound traffic as “local” or, at least, “not access” traffic. Traffic that is not access traffic is subject to the reciprocal compensation obligations set forth in sections 251(b)(5), 252(d)(2) and the FCC’s implementing rules. A conclusion that dial-up ISP-bound traffic is jurisdictionally interstate does not compel a conclusion that the traffic be treated as “nonlocal.” In fact, there is clear precedent for the fact that local service can be jurisdictionally interstate.¹⁷ The jurisdictional characterization has nothing to do with the service characterization. This would allow the FCC to conclude that dial-up ISP-bound traffic is “interstate” as a jurisdictional matter, and “local” as a service category. As local traffic, dial-up ISP-bound traffic is subject to reciprocal compensation like all other local traffic.

notion that ISPs are like other business users of telephone service, *i.e.*, they are end users for telephone pricing purposes. They are subject to local telephone charges and they are not subject to access charges.

¹⁷ The FCC has already recognized “interstate local traffic” (*see, e.g.*, Preliminary Statistics of Communications Common Carriers, 1997 Ed., at 154 (listing LEC “Interstate Basic Local Service” revenues in column 5 of row 1010)). The Commission has explicitly permitted carriers to provide local service (in expanded local calling service or “ELCS” areas) that is jurisdictionally interstate. *See Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, CC Docket No. 96-159, File Nos. NSD-LM-97-2 through NSD-LM-97-25, Memorandum Opinion and Order, ¶¶ 18-19, Appendix A (rel. July 15, 1997) (granting LATA modifications to allow BOCs to provide “traditional local service” in the form of ELCS between exchanges, some of which are located in adjacent states, such as Ohio-West Virginia and West-Virginia-Virginia). Indeed, in a recent case, the Commission recognized that reciprocal compensation applies where competing carriers exchange local traffic in ELCS areas that cross state lines. *See Request by RCN Telecom Services and Bell Atlantic for Clarification of Bell Atlantic's Authority to Carry Local Traffic between Exchanges on behalf of Competitive Local Exchange Carriers*, File No. NSD-L-99-05, Memorandum Opinion and Order (rel. Aug. 31, 1999) (permitting Bell Atlantic and RCN to exchange, under reciprocal compensation arrangements, local traffic in an expanded local calling service area that crossed the Pennsylvania-New Jersey border as well as a LATA border).

B. Dial-Up Calls to ISPs “Terminate” Within the Local Calling Area for Purposes of Section 251(b)(5).

Whether or not reciprocal compensation under Section 251(b)(5) applies to dial-up ISP-bound traffic turns on whether the traffic is “local telecommunications traffic” pursuant to 47 C.F.R. § 51.70. Whether or not the traffic is “local exchange traffic” turns on whether it “terminates” within the same local calling area as the point of origination. The answer to this question hinges on whether the “termination” point is the ISP location associated with the dialed telephone number or the traffic’s ultimate destination point on the Internet.¹⁸

The D.C. Circuit determined that the FCC failed to explain why the FCC’s end-to-end analysis was controlling for determining whether calls to ISPs were local for purposes of reciprocal compensation. What the FCC neglected to consider was that “termination” can mean different things for jurisdictional purposes and service categorization purposes. The FCC’s “end-to-end” analysis, which has been used successfully (and was not vacated by the D.C. Circuit) for determining the jurisdictional nature of a communication, does not apply to determining the “termination” point for reciprocal compensation purposes. According to the D.C. Circuit, “arguments supporting use of the end-to-end analysis in the jurisdictional analysis are not obviously transferable to [the reciprocal compensation] context.”¹⁹

¹⁸ The dial-up call is directed through the telephone network via the instructions contained in the dialed telephone number. The originating customer’s requests for information from “web sites” are not implemented via signaling in the telephone network, but rather through information contained within the customer’s message content.

¹⁹ *Bell Atlantic v. FCC*, 206 F.3d at 6.

The D.C. Circuit identified the following basic problems with the application of the end-to-end analysis: (1) the function performed by CLECs in delivering ISP-bound calls seems to fit the definition of reciprocal compensation “termination” in Section 51.701(d) of the Commission's rules; (2) the FCC's reliance on cases concerning the handing off of traffic to long distance carriers did not account for the differences between long distance carriers and ISPs; and (3) the FCC's decision seemed at odds with its long-standing treatment of ISPs as end users.²⁰ The Commission now has the opportunity to resolve this issue in a manner that will remain faithful to the end-to-end method of determining jurisdiction but that also fully addresses the inconsistencies that arise when this method is applied for determining the point of “termination” under Section 251(b)(5).

Construing dial-up ISP-bound traffic as terminating at the ISP for purposes of Section 251(b)(5) is consistent with the Commission's definition of “termination” in the reciprocal compensation context. Section 51.701(d) of the Commission's rules defines “termination” as “the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.”²¹ As the D.C. Circuit recognized, calls to ISPs “appear to fit this definition: the traffic is switched by the LEC whose customer is the ISP and then delivered to the ISP, which is clearly the ‘called party.’”²²

²⁰ *Bell Atlantic v. FCC*, 206 F.3d at 6-8. The Court also found the Commission's failure to explain how ISP-bound traffic can be understood as “exchange access” rather than “telephone exchange service” as an independent basis for remand. *Id.* at 8-9.

²¹ 47 C.F.R. § 51.701(d).

²² *Bell Atlantic v. FCC*, 206 F.3d at 6.

A dial-up call to an ISP is the same as any other dial-up call, and the determination of whether the call is exchange access or local service should hinge on whether the call “terminates” at a number inside or outside the local calling area.²³ Thus, if the ISP is accessed via a local number, the call should be treated as local. If an end-user calls an ISP using a local number, the call is indistinguishable from any other local call: the end-user dials a local number; the end-user’s LEC (“originating LEC”) carries the call on its network to the interconnection point where it is handed off to the LEC (“terminating LEC”) serving the ISP; the terminating LEC transports the call to its switch, performs switching, and then delivers the call to the ISP, just as the terminating LEC would have delivered it to any one of its other non-carrier, end-user customers. The call is routed over the public switched telephone network as are all other dial-up, interconnected, local calls. Once under the control of the ISP, the communication is out of the control of the terminating LEC, at which point the call enters the Internet.

Had the call been placed to an ISP not served by a local number, the originating LEC would have handed off the call to an IXC, which in turn, would have handed the call to a terminating LEC outside the local calling area of the originating LEC’s end-user. In the latter scenario, no reciprocal compensation would be owing from the originating LEC to the terminating LEC, because of the intervening IXC connecting the two LECs.²⁴ Whether or not reciprocal compensation is owing from the originating LEC to the terminating LEC hinges on

²³ In fact, it is impossible to systematically and comprehensively identify and separate *either* calls to ISPs or calls to the Internet. Without self-certification by ISPs *and* invasive examination of the calling parties’ message content, Internet-bound calls cannot be identified.

²⁴ As ALTS has pointed out, only interexchange traffic involving an originating carrier, a terminating carrier, and a long distance carrier issuing toll bills to end users is excluded from the logic of the Commission’s reciprocal compensation rules. See *Local Competition First Report and Order* at para. 1034.

whether the originating LEC hands off the call to a terminating LEC, which terminates the call at a number within the local calling area, hence treating it as a local service.

A carrier must be fairly compensated for carrying traffic. In the absence of an IXC, the terminating carrier must be able to receive compensation from the originating LEC via reciprocal compensation. The local rate/cost recovery regime collects compensation from the originating LEC. There is no reason to diverge from this model in the case of dial-up ISP-bound traffic terminating at a local number.

The Commission should logically hold that, as used in the context of Section 251(b)(5), a dial-up ISP-bound call terminates at the telephone number of the non-carrier called party designated by the terminating LEC's switch. If the called number is within the local calling area of the end-user originating the call or otherwise covered by a local service tariff, rules for terminating local calls should apply. It is irrelevant for Section 251(b)(5) purposes what the non-carrier called party does with the signals after that termination point. What is relevant is whether the non-carrier's called number is within the local calling area of the end-user originating the call or otherwise covered by a local service tariff. Under this approach, the end point for jurisdictional purposes is not necessarily the same as the point of "termination" for purposes of reciprocal compensation. While it may be that the underlying telecommunications for an Internet-bound call begins at the ISP subscriber and continues through to the ISP and onto the Internet, making the *end point* for the *jurisdictional* analysis the Internet server(s), the point of "*termination*" for *reciprocal compensation* purposes is simply the point at which the

communication reaches the non-carrier called party (*e.g.*, the ISP). As a result, the call would be local for Section 251(b)(5) purposes (provided that the ISP was accessed via a local number) but interstate for jurisdictional purposes.

The Commission's decisions applying the end-to-end jurisdictional analysis do not undermine the approach recommended here. Commission precedent, cited in the *ISP Recip Comp Order*, establishes that calls that are handed from one carrier to another for switching and delivery to end users are interstate if any part of the communication crosses a state boundary.²⁵ As the D.C. Circuit pointed out, however, ISPs are not carriers and cannot terminate calls, and that difference (while perhaps irrelevant for purposes of the jurisdictional analysis) “appears relevant for purposes of reciprocal compensation.”²⁶ This approach is consistent with this view because it treats dialed calls to ISPs just like all other circuit-switched calls to non-carriers and not like situations where the telecommunications traffic is delivered to another carrier.

Finally, it is important to note that the Commission’s reason for limiting 251(b)(5) to local traffic was to avoid disrupting the flow of access payments. The Commission has repeatedly noted that carriers should be compensated for the costs of carrying traffic.²⁷ Because no access payments are actually made on ISP-bound traffic terminating at a number within the

²⁵ See *ISP Recip Comp Order*, ¶¶ 10-11 (discussing *Teleconnect Co. v. Bell Telephone Co. of Penn.*, 10 FCC Rcd 1626 (1995) and *Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corp.*, 7 FCC Rcd 1619 (1992)).

²⁶ *Bell Atlantic v. FCC*, 206 F.3d at 7-8.

²⁷ See, *e.g.* *Local Competition First Report and Order*, para. 1112.

originating callers local calling area, the logical conclusion is that dial-up ISP-bound traffic should be treated as local for 251(b)(5) purposes.²⁸

Only interexchange traffic involving an originating carrier, a terminating carrier, and a long distance carrier issuing toll bills to end users is excluded from the logic of the Commission's reciprocal compensation rules.²⁹ Dial-up ISP-bound traffic does not fall into this exemption. Dial-up ISP-bound traffic involves only a LEC-to-LEC hand-off with no intervening IXC. Like all other LEC-to-LEC hand-offs, dial-up calls to ISPs constitute local traffic subject to reciprocal compensation like all other local traffic.

II. PRINCIPLES GOVERNING COMPENSATION FOR DIAL-UP ISP-BOUND TRAFFIC

The foregoing demonstrates that dial-up ISP bound calls, while jurisdictionally interstate, are local in nature and must be subject to reciprocal compensation. Once the FCC makes this determination the following principles must logically apply.

- Transport and termination of dial-up ISP-traffic incurs costs that must be recovered from inter-carrier payments. The local rate/cost recovery regime collects compensation from the originating LEC. There is no reason to diverge from this model in the case of dial-up ISP-bound traffic terminating at a local number.
- All dial-up ISP-bound traffic must be treated as local calls for compensation purposes. The operational aspects of dial-up ISP-bound traffic resemble other local traffic (*i.e.*, chat lines, calls among teenagers, etc.) and involve costs to the terminating carrier. Just like other local traffic, dial-up ISP-bound traffic incurs costs that must be recovered as a

²⁸ If dial-up ISP-bound traffic were determined to be non-local, then it would also be necessary to determine what non-local tariff would apply to the originating end-user.

²⁹ See *Local Competition First Report and Order* at para. 1034.

matter of economic efficiency.³⁰ Dial-up calls to ISPs incur the same costs as all other local calls: the transport from the hand-off point to the terminating switch, plus the switching and delivery of the call to the called number. The identity of the end-user to which a call is delivered has no impact on the cost incurred by the LEC to deliver the call. As a result, there is no basis for differentiating the amount of reciprocal compensation based on the identity of the customer.

- The costs of terminating a dial-up ISP bound call include the traffic-sensitive costs of local switching as well as the cost of transporting such calls.³¹
- The proper rate for dial-up ISP-bound traffic is the local reciprocal compensation rate.
- Reciprocal compensation must be governed by the Commission's rules concerning end office and tandem rate structures.
- Section 51.711 of the FCC's rules provides that where a CLEC's switch serves a geographic area similar to the area served by an ILEC's tandem switch, the CLEC's switch provides the same function as an ILEC tandem, and the CLEC is entitled to reciprocal compensation at the tandem interconnection rate, which includes the following rate elements: (1) tandem switching, (2) transport between the ILEC's tandem and its end offices; and (3) end office switching.

³⁰ See, e.g., Reply Comments of Bell Atlantic, in CC. Docket No. 96-98, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, May 30, 1996 at 20 (“The most blatant example of a plea for a government handout comes from those parties who urge the Commission to adopt a reciprocal compensation price of zero, which they euphemistically refer to as ‘bill and keep.’ A more appropriate name, however, would be ‘bilk and keep,’ since it will bilk the LECs’ customer out of their money in order to subsidize entry by the likes of AT&T, MCI, and TCG....[A] regulatory mandated price of zero – by any name – would violate the Act, the Constitution, and sound economic principles”). Bell Atlantic also pointed out that reciprocal compensation would apply to ISP-bound traffic. *Id.* at 21. See also Comments of Ameritech in CC. Docket No. 96-98, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, May 16, 1996 (“[reciprocal compensation charges should allow the carrier to recover all costs, including joint, common, and residual costs”). See also *Local Competition First Report and Order*, para. 1112 (“we find that carriers incur costs in terminating traffic that are not *de minimis*, and consequently bill-and-keep arrangements that lack any provisions for compensation do not provide for recovery of costs”).

³¹ 47 C.F.R. § 51.709. An additional policy benefit to requiring reciprocal compensation for terminating dial-up calls to ISPs is that such a policy adds incentive for ILECs to keep their switching costs down. If ILECs are indeed net payors of reciprocal compensation, their incentive would be to reduce switching costs. In the wake of the recent decision by the Eighth Circuit, which may put into question the appropriate price of unbundled switching, reciprocal compensation for ISP-bound traffic may prove to be an effective, self-effectuating mechanism to encourage ILECs to keep down switching costs. ILECs may have to determine whether they would prefer relatively high switching costs and relatively high reciprocal compensation payments, or relatively low switching costs and relatively low reciprocal compensation payments. See *Iowa Util. Bd. v. FCC*, No. 96-3321, Opinion (Filed July 18, 2000).

- Any CLEC seeking bill-and-keep must be free to do so, but no state may impose a mandatory bill-and-keep regime.
- Because the FCC has established jurisdiction over ISP-bound traffic, the FCC should make the Rocket Docket available to ensure that CLECs are being paid the state-set rates.

CONCLUSION

There is no doubt that there are costs associated with terminating calls to ISPs. Carriers should be fairly compensated for terminating such calls. The Commission now has the opportunity to simply and clearly resolve the issue, which has stifled inter-carrier negotiations and competition for the past several years. In the *ISP Recip Comp Order*, the FCC retained jurisdiction over dial-up ISP-bound traffic. That conclusion was not vacated by the D.C. Circuit. Thus the Commission, while not abandoning its conclusion that dial-up calls to ISPs are jurisdictionally interstate, may conclude that, like all other calls terminating at local businesses, dial-up calls to ISPs are local for service categorization purposes. And like all other calls fitting within the local service category, these calls are subject to reciprocal compensation pursuant to Section 251(b)(5).

Respectfully submitted,

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