DOCKET FILE COPY ORIGINAL

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

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

REPLY COMMENTS OF AMERICA ONLINE, INC.

William W. Burrington
Director, Law and Public Policy
and Assistant General Counsel
Jill A. Lesser
Deputy Director, Law and Public Policy
and Senior Counsel
AMERICA ONLINE, INC.
1101 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(202) 530-7878

Donna N. Lampert
James A. Kirkland
Yaron Dori
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Counsel for America Online, Inc.

Dated: February 13, 1997

TABLE OF CONTENTS

Page

INTRODUCTION AND SUMMARY 2

I. THE FCC SHOULD CONCLUDE THAT INFORMATION SERVICE PROVIDERS ARE NOT CARRIERS SUBJECT TO ACCESS CHARGES 3

II. NO PARTY HAS OFFERED EVIDENCE THAT ISPS DO NOT PAY COMPENSATORY RATES OR THAT THE ILECS ARE NOT RECOVERING THEIR COSTS 7

III. WHILE THERE IS NO EVIDENCE THAT TODAY'S INTERNET ONLINE TRAFFIC GENERALLY IMPACTS THE CIRCUIT-SWITCHED NETWORK ADVERSELY, THERE ARE TECHNOLOGICAL AND ENGINEERING SOLUTIONS IN THE LIMITED CASES WHERE THERE IS ISOLATED CONGESTION 10

IV. THE FCC SHOULD FOCUS ON ITS PRIMARY GOAL OF PROMOTING COMPETITION AND BRINGING UNECONOMIC ACCESS CHARGES IN LINE WITH COSTS 12

CONCLUSION 15

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

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263

REPLY COMMENTS OF AMERICA ONLINE, INC.

America Online, Inc. ("AOL"),[1] by its attorneys, and pursuant to Section 1.415 of the Commission's rules, hereby submits these reply comments in the Notice of Proposed Rulemaking ("Notice") released on December 24, 1996, regarding Access Charge Reform.[2]

---

[1] Founded in 1985, AOL is the world's largest Internet online information service provider, with approximately 8 million members and local dial-up access in 700 cities worldwide. Through its service, AOL provides consumers with original programming and informative content, E-mail capabilities, access to the World Wide Web and informational databases, electronic magazines and newspapers, and opportunities to participate in online "chat" conferences, that in totality offer an interactive community that enhances learning, personal communication, and productivity.

[2] In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Telephone Network by Information Service and Network Access Providers; Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, CC Docket Nos. 96-262, 94-1, 91-213, and 96-263, FCC No. 96-488 (rel. December 24, 1996) ("Notice").

INTRODUCTION AND SUMMARY

In its initial Comments in this proceeding, AOL demonstrated that there are sound legal and policy reasons for the Commission to affirm its tentative conclusion that access charges should not apply to interstate Information Service Providers ("ISPs"). Significantly, the comments of record underscore both the legal and policy bases for affirming the Commission's tentative conclusion that access charges should not be extended to ISPs.

As delineated by commenting parties, by their terms, the access charge rules at issue are applicable only to carriers, not ISP end-users. Both the FCC and the Congress have consistently held that ISPs are not carriers and there is no sound basis to alter radically this precedent.

Moreover, despite the rhetoric of some commenters, the simple fact is that no party has offered any genuine evidence that demonstrates that ISPs do not already pay compensatory rates or that incumbent local exchange carriers ("ILECs") are incurring costs that are not being recovered. To the contrary, available information indicates that the ILECs are benefitting substantially from the growth of Internet online and related services and have been promoting aggressively these services to boost their bottom lines.

Neither has any party offered any legitimate evidence to back up dire predictions of "network collapse." The reason is apparent -- there is no general adverse impact on the circuit-switched network due to Internet online usage. Critically, the trends in network usage have been widely publicized and should not have come as a surprise to the ILECs, who have themselves been actively promoting services that encourage increased network usage, including second lines for Internet use, faxes and telecommuting. In the limited instances where there is isolated congestion, there are existing and developing technological and

engineering solutions that can be pursued and AOL commits to working cooperatively with all relevant entities to ensure that it can deliver its services reliably and efficiently.

Finally, the comments highlight the crucial need for the FCC to promote robust competition, especially facilities-based competition. To achieve this key goal of the Telecommunications Act of 1996 ("1996 Act"),[3] the FCC should establish forward-looking pricing at economic costs consistent with fundamental principles of cost-causation. Only when the market offers customers real choices will the competitive benefits of lower prices, improved quality and more innovative services be attained. Most importantly, it is this vigorous competition that will spur the development of the facilities and infrastructure that will support telecommunications and information services into the next century.

I. THE FCC SHOULD CONCLUDE THAT INFORMATION SERVICE PROVIDERS ARE NOT CARRIERS SUBJECT TO ACCESS CHARGES

As the initial comments in this proceeding underscore, extension of the Commission's interexchange carrier access charge rules to ISPs, or any particular class of ISPs, such as Internet online service providers, would be a sharp break with regulatory precedent and an unjustifiable reversal of the policies underlying the Commission's rules.[4]

By their terms, the FCC's Part 69 access charge rules were primarily designed to enable ILECs to recover access costs generated by interexchange carriers ("IXCs").[5] Indeed, it is inaccurate even to state that there is an "exemption" from these rules for ISPs, because the per-minute charges that are identified in the FCC's rules and that are the primary subject of this proceeding are applicable only to carriers. Accordingly, the Part 69 rules

---

[3] Pub. L. No. 104-104, 110 Stat. 56 (February 8, 1996).

[4] See generally Access Reform Task Force, "Federal Perspectives on Access Charge Reform: A Staff Analysis," April 30, 1993 at 28-30.

[5] Id. at 11-12.

themselves distinguish clearly between carriers -- who are required to pay access charges -- and end users -- who are not.[6] As some commenters note, the access charge regime was adopted in response to the emergence of competition in the interstate interexchange services market after the breakup of AT&T.[7] In short, the rules were designed for IXCs and are inapplicable to ISPs.

The Commission has repeatedly recognized that end users such as enhanced service providers ("ESPs"), of which ISPs are a subset, are not subject to its carrier access charge rules. In 1981, the FCC recognized that it should not apply carrier access charges to ESPs.[8] In 1987, the Commission expressly held that "Under our rules, enhanced service providers are treated as "end users" [who do] not pay interstate access charges."[9] Thereafter, the Commission has consistently concluded that application of interexchange access charges to ESPs is inappropriate[10] and that ISPs are not telecommunications carriers.[11]

---

[6] Of course, as end-users, ISPs pay the Part 69 charges specifically applicable to them, such as the Subscriber Line Charge ("SLC"). Compare 47 C.F.R. §§ 69.4(a) and 69.5(a) (listing end user charges) with §§ 69.4(b) and 69.5(b) (listing "carrier's carrier charges").

[7] See, e.g., Comments of Internet Access Coalition at 10-11; In the Matter of MTS and WATS Market Structure, Third Report and Order, 93 F.C.C. 2d 241 at ¶ 1.

[8] See In the Matter of MTS and WATS Market Structure, Memorandum Opinion and Order, 97 F.C.C.2d at ¶ 75-80 (1983).

[9] See Northwestern Bell Telephone Company Petition for Declaratory Ruling, 2 FCC Rcd 5986, 5988 (1987).

[10] See, e.g., In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd 2631, 2633 (1988); In the Matter of Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd 4524 at ¶ 60 (1991).

[11] See, e.g., In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, FCC 96-325

(continued...)

Some parties suggest that while the exclusion of ISPs from the Part 69 regime may have been once justified as a means of speeding the development of the information services industry, this policy is now a regulatory anachronism.[12] But, the manner in which ISPs actually use the local network supports the conclusion that they are end users rather than carriers, regardless of the maturity of the information services industry.[13] Thus, the erroneous conclusion that Pacific urges the FCC to accept -- that it is discriminatory not to require ISPs to pay access charges like other access users[14] -- rests on a flawed premise. Regardless of the rhetoric,[15] ISPs are simply not "access users."

The Telecommunications Act of 1996 provides further support for the view that ISPs are not carriers. The 1996 Act defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change

---

[11](...continued)
(rel. Aug. 8, 1996) at ¶ 995 ("Interconnection Order"), stayed in part pending review, Iowa Utility Board v. F.C.C., No. 96-3406 (8th Cir. filed Oct. 15, 1996), application to vacate denied, _ U.S. _, 117 S.Ct. 429 (Nov. 12, 1996).

[12] See Comments of America's Carriers Telecommunication Association ("ACTA") at 24-30; Comments of Pacific Telesis Group ("Pacific") at 79-81; Comments of Communications Workers of America ("CWA") at 6-7. Notably, some ILECs do acknowledge that the imposition of interexchange carrier access charges on ISPs is inappropriate. See, e.g., Comments of Frontier Corporation ("Frontier") at 19-20; Comments of Southern New England Telephone ("SNET") at 55-56; Comments of BellSouth Corporation and BellSouth Telecommunications, Inc. ("BellSouth") at 86-87.

[13] As AOL and others pointed out in their initial comments, ISPs are not unique in using their lines primarily or exclusively to receive incoming traffic, see Comments of AOL at 8; see also Comments of Pennsylvania Internet Service Provider ("PISP") at 21-22.

[14] See, e.g., Comments of Pacific at 78-80.

[15] See, e.g., Comments of ACTA at 24-30 (referring to the "powerful dominant ISP community," stating that failure to impose access charges undermines public confidence in "the impartiality and independence (from political pressures) of the Commission," and implying that the FCC will "tax" certain technologies for "political expediency").

in the form or content of the information as sent and received." "Telecommunications carriers" are providers of "telecommunications services,"[16] which are in turn defined as "the offering of telecommunications for a fee directly to the public."[17] "Information services," by contrast, such as those provided by AOL, involve control over the form and content of information.[18] As providers of information services, ISPs such as AOL fall squarely outside of the definition of "telecommunications carriers" as defined by the 1996 Act.[19]

Given that interexchange carrier access charges are inapplicable to ISPs because ISPs are not carriers, it is similarly erroneous to conclude that access charges would be appropriate for ISPs as long as they are priced at forward-looking costs.[20] Whether access charges are priced at forward-looking economic costs is irrelevant to whether they should apply to ISPs. AOL does believe, however, that the forward-looking long run incremental cost methodology that many parties advocate will best serve the competitive goals of the 1996 Act and the Commission's stated policies and therefore should be adopted.[21] But, however access charges are established, they do not and should not apply to non-carrier ISPs.

---

[16] 47 U.S.C. § 153 (44).

[17] 47 U.S.C. § 153 (46).

[18] 47 U.S.C. § 153 (20).

[19] The Joint Board on Universal Service reached the same conclusion in its Recommended Decision. See Recommended Decision, Federal-State Joint Board on Universal Service, FCC 96J-3 (full cite) (released Nov. 8, 1996); see also Comments of National Cable Television Association ("NCTA") at 6.

[20] See, e.g., Comments of AT&T at 71-72; Comments of Sprint Corporation ("Sprint") at 58-59; Comments of Illinois Commerce Commission ("ICC") at 28.

[21] See Comments of AOL at 11-12.

II. NO PARTY HAS OFFERED EVIDENCE THAT ISPS DO NOT PAY COMPENSATORY RATES OR THAT THE ILECS ARE NOT RECOVERING THEIR COSTS

Significantly, while ISPs are not carriers and hence not required to pay interstate access charges under the Commission's Part 69 rules, they are certainly not "exempt" from the obligation to contribute to the cost of the local telephone network they use. First, as the record demonstrates, calls in the U.S. are "sent paid" so that as a factual matter, the "costs" that ILECs cite to are not "caused" by ISPs any more than any called party "causes" the traffic it receives.[22] Furthermore, as many commenting parties explain, ISPs and their subscribers often acquire numerous enhanced and other services and facilities from the ILECs, as well as basic telephone services, all of which they compensate the ILECs for.[23] In this sense, it is accurate to say that all users should contribute to network improvements to produce economically efficient results.[24] Indeed, this is precisely the case today, as residential and business users, including ISPs, pay for the costs of the services (and underlying facilities) they use. Correspondingly, when new services are available, the rates charged to end users will presumably also include the legitimate economic costs of those facilities and services.

While many ILECs claim that costs imposed by ISPs exceed ILEC revenues, they fail to offer any genuine evidence, other than a few anecdotes, to support their assertions that ISPs and their subscribers, taken as a whole, do not pay compensatory fees or that, on the

---

[22] See Lee L. Selwyn and Joseph W. Laszlo, "The Effect of Internet Use on the Nation's Telephone Network," Economics and Technology, Inc. (Jan. 22, 1997), attached to Comments of the Internet Access Coalition ("ETI Study") at 23.

[23] See, e.g., ETI Study at 23-29; Comments of Compuserve Incorporated and Prodigy Services Corporation at 13-14.

[24] See Comments of American Association of Retired Persons ("AARP") at 14-15.

whole, the ILECs are not recovering their costs. Instead, these commenters baldly assert that there are identifiable ISP-generated costs that must be recovered through per-minute access charges paid by ISPs.[25] In any event, AOL recognizes that the FCC has committed in another proceeding to collecting accurate and complete data regarding ILEC costs and current network usage and agrees that such information is most appropriately considered in the context of that proceeding.[26]

Incredibly, if anything, the evidence indicates that the ILECs have received significant economic benefits from the growth of the ISP business and related Internet online traffic, as new revenue streams have been established.[27] For instance, while Pacific argues that even the costs associated with providing second phone lines for Internet online and other usage are non-compensatory,[28] the facts are otherwise.[29] Less than three weeks ago, Bell Atlantic,

---

[25] See, e.g., Comments of USTA at 82; Comments of Pacific at 78-82; Comments of Frontier at 20. While Bell Atlantic/NYNEX do include with their comments a report regarding ISP usage, it is fundamentally flawed, ETI Study at 44-46.

[26] In the Matter of Usage of the Public Switched Telephone Network by Information Service Providers, Notice of Inquiry, CC Docket No. 96-263, FCC 96-488, at ¶ 315 (rel. Dec. 24, 1996) ("Notice of Inquiry").

[27] ETI Study, supra, at 23-25.

[28] Comments of Pacific at 77 (arguing that the costs of second lines exceed revenue).

[29] These claims are not new. Despite repeated attempts by the ILECs to convince regulators that their services are priced below costs, the ILECs' data, when it is presented at all, is still hotly disputed in numerous states. See, e.g., State of New York Public Service Commission, Joint Complaint of AT&T Communications of New York, Inc., MCI Telecommunications Corporation, WorldCom, Inc. d/b/a LDDS WorldCom and the Empire Ass'n of Long Distance Telephone Cos., Inc. Against New York Telephone Company Concerning Wholesale Provisioning of Local Exchange Service by New York Telephone's Tariff No. 900, Case No. 95-C-0657, Ruling Reopening Record for Limited Purposes, (issued September 9, 1995) at 1-2, 4-8 (reopening the proceeding regarding determination of local network element costs). Before the Public Utilities Commission of the State of California, Rulemaking on the Commission's Own Motion to Govern Open Access to

(continued...)

NYNEX, Pacific Telesis and SBC Communications all reported profit gains as a result of orders for second lines and enhanced services.[30] Indeed, the story ILECs like Pacific tell publicly, particularly outside of the regulatory context, is clear and compelling. In a January, 1997 interview, Pacific Telesis Chairman and CEO, Philip J. Quigley, declared:

> We're already making money from the Internet, although many people may not realize it . . . Internet connection creates significantly stronger demand for a wide variety of . . . services that Pacific Telesis provides, and that is where our long-term opportunity is . . . . Believe me, it's no coincidence that our voice mail product is doing so well or that 20 percent of our residential customers already have additional access lines.[31]

The FCC should not buy the wholly unsubstantiated ILEC claims on network usage and costs. Instead, it should look at the ILECs' own admissions and actions as to how profitable the Internet services business can be and continue to collect accurate data in the companion proceeding to this Notice.[32]

---

[29](...continued)
Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant Carrier Networks, Docket No. R.93-04-003, Administrative Law Judge's Ruling Concerning Impact of the August 8, 1995 First Report and Order of the Federal Communications Commission in CC Docket No. 96-98 on the Scope of the Proceeding (dated December 18, 1996), at 12-14, 21-22, 32-34, 35-36 (ordering submission of revised cost studies regarding local network element and services by Pacific Bell and GTE California Incorporated; ordering submission of the AT&T/MCI Hatfield Model; and inviting comments on all studies/models).

[30] "RHCs Post 1996 Profit Gains on New Lines," Communications Daily, January 22, 1997, at 1-2.

[31] Interview with Philip J. Quigley, Pacific Telesis -- Inside Line; available on the Pacific Telesis Internet home page, http://www.pactel.com/financial/inside_line/il98.html (February 8, 1997).

[32] Notice of Inquiry, supra, at ¶ 311.

The Commission should also acknowledge fundamental competitive reality as it weighs ILEC claims of possible "network collapse" and "uncompensated costs."[33] Today, every major ILEC has entered or has concrete plans to enter, the Internet services business.[34] Against this backdrop, the Commission should recognize the natural business incentives of these companies to gain a competitive advantage over existing ISPs, by imposing excessive costs such as inappropriate per-minute access charges and through other practices.[35] For instance, the FCC should also consider whether the ILECs are bearing their fair share of common overhead costs as they enter these competitive businesses or whether these costs are being recovered unfairly from regulated telephony operations,[36] as well as whether any marketing or other business practices tilt the market in an anticompetitive manner.

III. WHILE THERE IS NO EVIDENCE THAT TODAY'S INTERNET ONLINE TRAFFIC GENERALLY IMPACTS THE CIRCUIT-SWITCHED NETWORK ADVERSELY, THERE ARE TECHNOLOGICAL AND ENGINEERING SOLUTIONS IN THE LIMITED CASES WHERE THERE IS ISOLATED CONGESTION

Just as no party has offered genuine evidence that ILEC network costs are today unrecovered, neither has any commenter identified a general problem of network congestion

---

[33] Comments of Consumer Project on Technology ("CPT") at 1-2.

[34] See Stephania H. Davis, "Expanded Portfolios: Local Telcos Put Internet Plans Into Action," Telephony, Jan. 27, 1997, at 40.

[35] For similar reasons, the Commission should also be wary of any suggestions that the "access charge" pricing model should be emulated for new data services. See, e.g., Comments of Southwestern Bell Telephone Company ("SBC") at 19-20 (urging the Commission to treat advanced technological services such as frame relay as new access services).

[36] Such cross subsidies are explicitly barred under the 1996 Act. See 47 U.S.C. § 254(k). Compare Comments of New York Department of Public Service ("NYDPS") at 2-5 (urging that common costs be allocated fairly as ILECs enter other competitive businesses such as InterLATA).

as a result of ISP or Internet online usage. Moreover, while AOL understands that there may be some limited instances of isolated congestion, re-engineering and inter-industry cooperation can today promote efficient and reliable network usage.

As stated previously, AOL actively participates in ongoing cooperative efforts with its ILEC suppliers.[37] Given the nature of AOL's business, it has a strong interest in ensuring that the network is reliable and that all consumers can use its service and the public voice network without obstruction. It is for this reason that AOL has recently agreed to become a member of the FCC's Network Reliability and Interoperability Council, which is currently evaluating the effects of Internet usage, if any, on the voice network.[38] Moreover, AOL works closely with particular carriers whenever possible to alleviate or avoid traffic imbalances. Given the dependency AOL and its millions of residential customers have today on the public switched network, AOL is committed to ensuring that the network operates reliably, efficiently and economically.

Significantly, there are presently strong indications that the market is responding quickly to promote new technologies and services to address anticipated congestion concerns.[39] Indeed, such is the natural expectation in a competitive market. While AOL

---

[37] Comments of AOL at 13-14.

[38] Notice at ¶ 287 citing News Release, "Hundt Asks Network Reliability and Interoperability Council to Monitor Impact of Internet Growth on Public Networks," November 1, 1996.

[39] See e.g., "Lucent Technologies, Inc. Announcement of 'Rapid Software Delivery'", TR Daily, February 5, 1997 at 8 (describing a new software release for the 5ESS-2000 digital exchange switch that includes Internet congestion relief); "No Detours," Telephony, February 3, 1997 at 38-42 (describing an end-to-end Internet traffic solution that utilizes existing infrastructure); "ADSL Card Takes a Load Off," Telephony, January 6, 1997 at 7 (describing a new DSL integrated multiplexer intended for central office use); and "Rerouting Internet Traffic Jams," Telephony, November 11, 1996, at 12 (describing numerous central office hardware and software products designed to prevent network congestion).

intends to address these developments in greater detail in the FCC's Notice of Inquiry, it is worth noting here that the answer to any shortcomings with the circuit-switched voice network for the carriage of data traffic clearly is not to award the ILECs more dollars to expand it.

It also should be emphasized that the ILECs should have been well aware of the trend in network usage and Internet growth and should have engaged in better forward-looking planning. Indeed, it should not have come as any surprise that traffic other than voice telephone traffic -- from fax machines, telecommuting, and data transfer -- has increased the overall use of the ILEC networks. In fact, aggressive marketing by the ILECs of second lines to the home for these services illustrates that the growth in traffic volumes could have been clearly foreseen.[40] Yet, despite these clear indications of a changing environment, the ILECs apparently have continued to base their business plans on average call hold times of 3 to 5 minutes and have failed to engage in any needed forward-looking planning. If the FCC seeks to promote efficiency, it must encourage all service and facilities providers to respond to the changing demands of their customers, even if it involves making substantial investments that may or may not be recovered in the competitive marketplace. This is the nature of competition and precisely the manner in which AOL and others have been and must continue to operate.[41]

IV. THE FCC SHOULD FOCUS ON ITS PRIMARY GOAL OF PROMOTING COMPETITION AND BRINGING UNECONOMIC ACCESS CHARGES IN LINE WITH COSTS

---

[40] See ETI Study at 33.

[41] For example, AOL is investing $350 million in new facilities based on its long term expectation that these investments will be profitable.

AOL wholeheartedly agrees with the vast majority of commenters who state that access charges, as currently constituted, fail to reflect economic costs and as such, thwart the development of robust competition.[42] The Commission should not allow dire predictions of network failure or threats that the ILECs will not invest in the future[43] to deter it from pursuing the path of competition. AOL agrees that incentives are needed for deployment of data networks but urges the Commission to consider carefully the true nature of necessary incentives. It is the competitive marketplace itself that provides the best incentive for the deployment of innovative, quality and economically-priced services and facilities and thus, it is the competitive marketplace the FCC should foster.

Incredibly, some ILECs seem to be threatening that they will not have the incentive to invest in more efficient networks if the FCC does not adopt the pricing regime they urge.[44] The FCC should not heed these threats but instead should recognize that the market itself will spur ILECs and others to provide the services that are in such great demand.[45] Indeed, this is the essence of what competition is about.

The FCC should also reject the outrageous statements of some parties suggesting that ISPs have incentives to use inefficient services and facilities that will persist as long as the

---

[42] See, e.g., Comments of AT&T at 12-18; see also Notice at ¶ 41-42.

[43] See, e.g., Comments of Pacific at 39-40.

[44] See, e.g., Comments of BA/NYNEX at 4-8.

[45] Lane Cooper and Chris Roeckl, "The Great Internet Bandwidth Debate -- Service Providers Look to Address Bottlenecks But Are at Odds Over Who Will Pay," Communications Week, (http://www.techweb.com/se/directlink.cgi?CWK19970203S0001), February 3, 1997 ("[C]ompetitive pressures have led to significant increases in national infrastructure capacity through better resource management.... With boatloads of money to be made, you can bet your browsers that the industry is working on solutions to ameliorate problems.").

FCC refrains from imposing its access charge rules.[46] As AOL explained in its initial comments, the ISP market is extremely competitive and every provider has powerful market incentives to offer the most reliable, cost-effective, efficient and quality service it can.[47] It is utterly groundless under these circumstances to contend that ISPs would ignore more efficient data-friendly services in favor of the inefficient circuit-switched network. AOL is well aware of the need to offer its customers quality service and is dedicated to providing its product in the most efficient and effective manner possible. To the extent the ILECs or any other entity offers an efficient, reliable and economic means to provide AOL's product to consumers, AOL has every incentive to use it to the ultimate benefit of the public. The fact remains today, however, that the ILECs control the crucial "last mile" into the home. As AOL seeks to serve universally all residences, such ubiquitous access is vital.

The vigorous promotion by the FCC of local competition, particularly facilities-based competition, will best further the public's interest in affordable, ubiquitous services that meet their needs.[48] When evaluating the availability of competitive offerings, AOL agrees that the FCC must examine the market from the customer's point of view,[49] for it is only when customers have available a reasonably priced, reliable and efficient alternative to the ILECs will the market benefits of lower prices, better quality and innovative services come to pass.[50] And, until such competition exists, the fact is that market forces alone will not

---

[46] See, e.g., Comments of Pacific at 78-80; Comments of BA/NYNEX at 63-64.

[47] Comments of AOL at 5-6.

[48] See also Comments of Worldcom, Inc. ("WorldCom") at 4-5, 8, 21-22.

[49] Comments of WorldCom at 21-22.

[50] See, e.g., Comments of AARP at 21.

bring rates to cost, but rather, the FCC must ensure that demonstrable movement in this direction occurs.[51]

In seeking to promote competition, AOL also concurs with those commenters that state the Commission should use cost-causation as its guidepost.[52] Consequently, it is inappropriate to increase the SLC above-cost for any class of customers, including multi-line business customers[53] and the Commission should reject decisively this proposal.[54] Rather than create a new system of uneconomic subsidies, the Commission should press to ensure cost-based rates in accordance with principles of sound economics. While some carriers note that most multi-line businesses are already at cost under the existing rates,[55] there is no legitimate reason to begin to implement a system that would send skewed market signals to users at this crucial time when the FCC strives to foster competition.

CONCLUSION

The record amply supports the FCC's tentative conclusion that carrier access charges should not apply to ISPs. Accordingly, to promote sound law and wise policy, the FCC should affirm that end-user ISPs are not subject to carrier charges. In addition, AOL

---

[51] See, e.g., Comments of AT&T at 20-28; Comments of Competitive Telecommunications Association ("CompTel") at 13-16.

[52] See e.g., Comments of Ad Hoc Telecommunications Users Committee at 4-6; Comments of Bell Atlantic/NYNEX at 33-35.

[53] See Notice at ¶ 65.

[54] There is ample record evidence that above-cost SLCs are unwise. See, e.g., Comments of Commercial Internet Exchange ("CIX") at 13; Comments of Internet Access Coalition at 6-8; Comments of ICC at 9-11; Comments of Competition Policy Institute ("CPI") at 18.

[55] See Comments of Bell Atlantic/NYNEX at 33.

applauds the FCC on its efforts to promote vigorous telecommunications competition and urges the FCC to adopt rules and policies that will hasten its arrival.

Respectfully submitted,

Donna N. Lampert
James A. Kirkland
Yaron Dori
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

William W. Burrington
Director, Law and Public Policy
and Assistant General Counsel
Jill A. Lesser
Deputy Director, Law and Public Policy
and Senior Counsel
AMERICA ONLINE, INC.
1101 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(202) 530-7878

Counsel for America Online, Inc.

Dated: February 13, 1997

F1/63363.1

CERTIFICATE OF SERVICE

I, Cheryl S. Flood, hereby certify that on this 13th day of February, 1997, I caused copies of the foregoing "REPLY COMMENTS OF AMERICA ONLINE, INC." to be sent first-class mail, postage prepaid, or to be delivered by messenger (*) to the following:

Cheryl S. Flood

*Regina Keeney
Chief
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street N.W.
Washington, D.C. 20554

*Kathleen B. Levitz
Deputy Bureau Chief, Policy
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

*James D. Schlichting
Chief
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

*Jane Jackson
Deputy Chief
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

*Robert M. Pepper
Chief
Office of Plans and Policy
Federal Communications Commission
Room 822
1919 M Street, N.W.
Washington, D.C. 20554

*A. Richard Metzger, Jr.
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

*Richard Welch
Chief
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, D.C. 20554

*Pat Degraba
Chief Economist
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

*Blair Levin
Chief of Staff
Office of Chairman Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

*Laurence D. Atlas
Associate Bureau Chief
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

*Kevin Werbach
Counsel for New Technology
Office of Plans and Policy
Federal Communications Commission
Room 822
1919 M Street, N.W.
Washington, D.C. 20554

*Kathy Franco
Legal Counsel
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

*Elliott Maxwell
Office of Plans and Policy
Federal Communications Commission
Room 822
1919 M Street, N.W.
Washington, D.C. 20554

*Thomas A. Boasberg
Senior Legal Advisor
Office of Chairman Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

*Michael R. Nelson
Office of Plans and Policy
Federal Communications Commission
Room 822
1919 M Street, N.W.
Washington, D.C. 20554

*Daniel Gonzalez
Legal Advisor
Office of Commissioner Chong
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

*James Casserly
Senior Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, D.C. 20554

*James R. Coltharp
Special Counsel
Office of Commissioner Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

*International Transcription Service
Federal Communications Commission
2100 M Street, N.W.
Room 140
Washington, D.C. 20037

F1/62957.1