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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)))	CC Docket No. 96-263

COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

Teleport Communications Group Inc. ("TCG") hereby submits its Comments in response to the Commission's Notice of Inquiry ("NOI") in the above-captioned proceeding.[1]

I. INTRODUCTION

The Commission has sought comment on the policies that would best facilitate the development of high-bandwidth data networks and preserve efficient incentives for investment and innovation in the underlying voice network, while encouraging information service and Internet access providers to use the public switched network.[2] In pursuing these policy objectives, the Commission should harmonize its efforts with its overarching goal of encouraging the rapid and vigorous development of facilities-based local exchange competition. The

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1. Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Inquiry, CC Docket No. 96-263, FCC No. 96-488 (rel. Dec. 24, 1996) ("NOI").

2. NOI at ¶ 311.

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Commission can achieve these twin objectives by maintaining its traditional policy of not imposing access charges on information service and Internet access providers ("ISPs").

II. DISCUSSION

The Commission has tentatively concluded that access charges should not be imposed on ISPs in their present form, and in its NOI it is inquiring whether to impose such charges on ISPs in the future.[3] TCG agrees with the Commission's conclusion that "[t]he mere fact that providers of information services use incumbent LEC networks to receive calls from their customers does not mean that such providers should be subject to an interstate regulatory system designed for circuit-switched interexchange voice telephony."[4] Imposing access charges on ISPs would be inequitable and would not serve the public interest for at least three reasons. First, it would be unfair to require ISPs to incur access charges when they neither receive nor use the services underlying those charges. Second, imposing access charges on ISPs would inevitably stifle growth in the vibrant information services market because those charges would increase the cost of ISPs' services, and that cost would be passed along to customers.[5] Third,

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3. NPRM at ¶ 288; NOI at ¶ 312.

4. NPRM at ¶ 288.

5. See, e.g., NPRM Comments of America OnLine, Inc. ("AOL") at 6-7.

imposing access charges on ISPs would subsidize a system that does not efficiently transport information services and would delay or reduce investment in making efficient data transport available to customers.[6] Accordingly, the Commission should reaffirm its conclusion that access charges should not be imposed on ISPs.

It is particularly inappropriate to assess access charges on ISP providers because they do not receive any benefit from the type of access services used by interexchange carriers and other conventional users of these services. The Commission traditionally has recognized that there must be a correlation between the type of services actually used by a customer and the rates paid by that customer. On this basis, for example, the Commission determined that competitive interexchange carriers should not be required to pay the same switched access rates as AT&T.[7] The Commission found that this result was equitable because the interconnection rate AT&T attributed to itself "assumes that certain capabilities and functions are provided by the local telephone company's facilities for use in connection with MTS and WATS calls, for which they are

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6. The Effect of Internet Use on the Nation's Telephone Network, Study of Economics and Technology, Inc. at 4, attached to NPRM Comments of the Internet Access Coalition ("ETI Study").

7. See Exchange Network Facilities for Interstate Access, 71 F.C.C. 2d 440 (1979).

entitled to compensation; these functions are not provided in connection with MTS/WATS-"like" calls in an ENFIA interconnection."[8]

In approving a lower interconnection rate to be paid by competitive interexchange carriers that reflected the disparity in the functionalities provided to them relative to those provided to AT&T, the Commission thus established a correlation between the rate and the functionalities and capabilities of the access services provided to the user of those services. The Commission should use the same analysis in the instant matter. ISPs do not receive or use the access service features and functions used by interexchange carriers, such as signalling, ANI, and other capabilities. Accordingly, given this concrete functional disparity, it would be unreasonable under Section 201(b) of the Act to require ISPs to pay the same access charges as interexchange carriers.

Moreover, imposing access charges on ISPs cannot be justified on a cost-causative basis.[9] Indeed, there is significant evidence that the current rates paid by ISPs and Internet subscribers adequately compensate incumbent local exchange carriers ("ILECs") for network usage.[10] ISPs and their end user customers currently compensate ILECs through their local rates, which reflect the cost of transporting the local calls placed by these parties. It should also be noted that,

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8. Id. at 454.

9. ETI Study at 22-24.

10. See, e.g., NPRM Reply Comments of AOL at 8-9.

while end users of ISP services pay for their local connections to the an ISP, end users of long distance services are not charged by the ILEC for their connection to the interexchange carrier.

Consequently, it would be improper to impose additional charges on ISPs, notwithstanding the claims of some BOCs that Internet users typically place calls of longer duration than voice users.[11] The BOCs argue that the ISPs' flat-rate business line charges do not cover the cost of upgrading network facilities to support the increased traffic.[12] This complaint, however, is unsupported and has no merit. ISPs should not be held responsible for the BOCs' network design decisions, when those decisions result in network capabilities of no value to the ISPs.

Imposing access charges on ISPs would also have a broadly negative impact on the development of information technologies. Enhanced service usage is extremely price sensitive.[13] Imposing time-sensitive charges on such usage by assessing access charges on ISPs would increase the cost of access to those services,[14] that inevitably would lead to increased prices and a decrease in the

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11. NPRM at ¶ 286.

12. Id.

13. See Moms Online Experiences an 80-Percent Growth in Traffic; Attributes Increase to New America Online Pricing Plan, Business Wire (Dec. 12, 1996)(noting a three-fold increase in users since AOL began to use a flat rate).

14. See Comments of AOL at 6-7.

use of enhanced services by the public.[15] Such decreased usage would, in turn, lead to a decline in the use of the public switched and high bandwidth networks and would deny service providers the revenues needed to fund continued improvements in those networks.

It is incontrovertible that applying access charges to ISPs would stifle incentives for carriers to invest in facilities designed to carry enhanced service traffic. Competitive industries invest in infrastructure to respond to customer demand.[16] Forcing ISPs and their customers to bear the onerous cost of access charges to support a network not tailored to their needs would not provide the proper incentives to construct high-bandwidth data networks and, worse, would result in the improper subsidization of the RBOCs voice networks. The RBOCs would then use that subsidization to suppress competition in the facilities-based local exchange market. This anti-competitive result would be in direct conflict with the purposes of the Telecommunications Act of 1996. Thus, imposing access charges on ISPs would impede rather than facilitate the Commission's goal of encouraging the development of high-bandwidth data networks and stimulating

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15. See NPRM at ¶ 285.

16. See NPRM Comments of AOL at 13 n. 22 (discussing AOL's capital investments in system capacity to meet customer needs); ETI Study at 32 (congestion due to an ISP purchasing insufficient infrastructure is best resolved by marketplace forces, such as customers "voting with their feet").

efficient incentives for investment, innovation and competition in the underlying local exchange networks.

III. CONCLUSION

Accordingly, for the reasons stated above, the Commission should find that ISPs should not be required to pay access charges.

Respectfully submitted,

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