EX PARTE OR LATE FILED

SBC Communications Inc.
1401 I Street, N.W.
Suite 1100
Washington, DC 20005

DOCKET FILE COPY ORIGINAL

June 11, 1997

Memorandum of Ex Parte Communication

RECEIVED

JUN 1 1 1997

Federal Communications Commission
Office of Secretary

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: *CC Docket No. 96-98 - Implementation of the Local Competition Provisions in the Telecom Act of 1996*

The attached letter was delivered today to Jim Schlichting, Tom Power and Ed Krachmer of the Competitive Pricing Division on behalf of SBC Communications, Inc. This material was provided as a follow-up to our Ex Parte contact of June 6, 1997.

We are submitting the original and one copy of this Memorandum to the Secretary in accordance with Section 1.1206(b)(2) of the Commission's rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at (202) 383-6429 should you have any questions.

Sincerely,

Attachment

cc: J. Schlichting, T. Power and E. Krachmer

No. of Copies rec'd 0+2
List ABCDE

SBC Communications Inc.
1401 I Street, N.W.
Suite 1100
Washington, DC 20005

June 11, 1997

Memorandum of Ex Parte Communication

Mr. Jim Schlichting
Chief, Competitive Pricing Division
Federal Communications Commission
1919 M Street, N.W., Room 518
Washington, D.C. 20554

Dear Mr. Schlichting:

Re: *CC Docket No. 96-98 - Implementation of the Local Competition Provisions in the Telecom Act of 1996*

As promised in our meeting on June 6, 1997, attached are sample notification letters sent by Southwestern Bell, Pacific Bell and Nevada Bell concerning the payment of reciprocal compensation for the delivery of traffic destined for Internet service providers. Please contact me at (202) 383-6429 should you have any questions.

Sincerely,

Jay Bennett

Attachment

cc: T. Power and E. Krachmer

Larry B. Cooper
General Manager-
Competitive Provider
Account Team

Southwestern Bell Telephone
One Bell Plaza
Suite 0525
Dallas, Texas 75202
Phone 214 464-8145
Fax 214 464-1486

Southwestern Bell

June 9, 1997

Mr. Matt Asmus
Regional Manager-Local Service
American Telco, Inc.
100 Waugh Drive
Suite 200
Houston, Texas 77007

RE: Local Terminating Compensation for Delivery of Internet Service Provider Traffic

Dear Mr. Asmus:

The purpose of this letter is to address local terminating compensation for the delivery of traffic destined for internet service providers (ISPs).

Originating access to an ISP is accomplished by the ISP's subscribers dialing a seven digit telephone number which local exchange carriers route through their switching networks to the ISP's premises. The ISP often uses special access circuits to transport this originating interexchange access traffic to a distant location.

The FCC has found, and the courts have agreed, that the jurisdiction of traffic is determined by the end-to-end nature of a call. In paragraph 28 of the FCC's *Order Designating Issues for Investigation* in CC Docket No. 88-180, released April 22, 1988, the FCC disagreed with an argument by Southwestern Bell that 800 credit card traffic terminated at the IXC's credit card switch for jurisdictional purposes. The FCC stated that the switching performed at a credit card switch was an intermediate step in a single end-to-end communication. It is the ultimate destination that must be used to jurisdictionalize a call. In the *NARUC vs. FCC* decision issued October 26, 1984, (746 F.2d 1492), the court found that even the use of facilities that are wholly within an exchange may be jurisdictionally interstate as a result of the traffic that uses them.

The FCC provided ISPs, insofar as they are also enhanced service providers, with an access charge exemption that permits ISPs to use local exchange services in lieu of access services to receive originating interstate calls (and to terminate interstate calls to the extent this functionality is required). The use of local exchange services by an ISP does not change, in any way, the jurisdiction of the originating interstate traffic transported over these services to the ISPs premises. In other words, this originating interstate access traffic does not become "local traffic" simply because the FCC permits an ISP to use business local exchange service as its exchange access service.

In paragraph 1034 of its *Local Competition Order* in CC Docket No. 96-98, released August 8, 1996, the FCC stated that the reciprocal compensation provisions of section 251(b)(5) would only apply to local traffic as defined by the state commission (paragraph 1035). Further, the FCC specifically ruled that reciprocal compensation did not apply to interstate or intrastate interexchange traffic. As such, Southwestern Bell/Pacific Bell will not request, nor will it pay, local terminating compensation for interstate or intrastate interexchange traffic. This includes calls passed to ISPs pursuant to local interconnection agreements since this traffic is jointly provided originating interexchange access. This decision satisfies the spirit and intent of the Telecommunications Act of 1996 and is consistent with the provisions of local interconnection agreements.

If you would like to discuss this matter further, I can be reached on 214-464-8145 or you may call your account manager, Jan Brainard, on 214-464-5143.

Sincerely,

cc: Jan Brainard

P. O. (Doug) Garrett
Executive Director
Local Interconnection
Industry Market Group

370 Third Street, Room 311
San Francisco, California 94107
(415) 542-3010
Fax (415) 543-2516
Pager (510) 830-5571

PACIFIC BELL
A Pacific Telesis Company

June 9, 1997

Mr. Andrew D. Lipman
Senior President, Legal/Regulatory Affairs
MFS/WorldCom
3000 K. Street NW, Suite 300
Washington, DC 20007

Re: Local Terminating Compensation for Delivery of Internet Service Provider Traffic

Dear Mr. Lipman:

The purpose of this letter is to address local terminating compensation for the delivery of traffic destined for Internet Service Providers (ISPs). Our fundamental concern is that each of us have been incorrectly treating this traffic as "local" for purposes of reciprocal compensation.

Originating access to an ISP is accomplished by the ISP's subscribers dialing a seven digit telephone number which local exchange carriers route through their switching networks to the ISP's premises. The ISP often uses special access circuits to transport this originating interexchange access traffic to a distant location.

The FCC has found, and the courts have agreed, that the jurisdiction of traffic is determined by the end-to-end nature of a call. In paragraph 28 of the *FCC's Order Designating Issues for Investigation* in CC Docket No. 88-180, released April 22, 1988, the FCC disagreed with an argument by Southwestern Bell that 800 credit card traffic terminated at the IXC's credit card switch for jurisdictional purposes. The FCC stated that the switching performed at the credit card switch was an intermediate step in a single end-to-end communication. It is the ultimate destination that must be used to jurisdictionalize a call. In the *NARUC vs. FCC* decision issued October 28, 1984, (746 F.2d 1492), the court found that even the use of facilities that are wholly within an exchange may be jurisdictionally interstate as a result of the traffic that uses them.

The FCC provided ISPs, insofar as they are also enhanced service providers, with an access charge exemption that permits ISPs to use local exchange services in lieu of access services to receive originating interstate calls (and to terminate interstate calls to the extent this functionality is required). The use of local exchange services by an ISP does not change, in any way, the jurisdiction of the originating interstate traffic transported over these services to the ISP's premises. In other words, this originating interstate access traffic does not become "local traffic" simply because the FCC permits an ISP to use business local exchange service as its exchange access service.

In paragraph 1034 of its *Local Competition Order* in CC Docket No. 96-98, released August 8, 1996, the FCC stated that the reciprocal compensation provisions of section 251(b)(5) would only apply to local traffic as defined by the state commission (paragraph 1035). Further, the FCC specifically ruled that reciprocal compensation did not apply to interstate or intrastate interexchange traffic. It appears that our companies may have incorrectly reciprocally compensated each other for the delivery of interexchange traffic to ISPs.

In our view, neither of us should request, nor should either of us pay, reciprocal compensation for interstate or intrastate interexchange traffic. This includes calls passed to ISPs pursuant to our local interconnection agreement since this traffic is jointly provided originating interexchange access calls. This approach satisfies the spirit and intent of the Telecommunications Act of 1996 and is consistent with the provisions of local interconnection agreements.

It is vital that our Companies meet as soon as possible to cooperate and assure that we are properly billing each other for termination of local calls under our interconnection agreement. I will contact you in the near future to set up this meeting.

Sincerely,

P. Doug Garrett

cc: M.E. Arbues, M.D. Ard, L.M. Bauman, T.L. Cabral, J.B. Doolittle