

EX PARTE OR LATE FILED

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April 7, 1998

HAND DELIVER

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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APR - 7 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Commercial Internet eXchange Association
CC Dkt. No. 96-45 (Report to Congress)
Ex Parte Presentation

Dear Mr. Caton:

In conformity with the Commission's rules, enclosed please find two copies of a written *ex parte* presentation for inclusion in the above-referenced docket. Originals of the attached letter were hand-delivered this day to Chairman Kennard and Mr. Pepper, and Commission staff listed on the letter.

Should you have any questions concerning this matter, please contact the undersigned directly.

Sincerely,



Mark J. O'Connor
Counsel for the Commercial Internet
eXchange Association

/mjo
Enclosures

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April 7, 1998

HAND DELIVERY

Chairman William E. Kennard
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

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

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APR - 7 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation
CC Docket No. 96-45 (Report to Congress)

Dear Chairman Kennard and Dr. Pepper:

The Commercial Internet eXchange Association ("CIX") writes to provide the Commission with additional information for its report to Congress concerning universal service issues.

CIX would like to clarify the business and carrier relationships which prevail in the ISP industry today. There are any number of entities which provide Internet access services today, including, but not limited to: satellite companies, cable companies, telephone companies, commercial non-facilities-based enhanced service providers, universities and other non-profit organizations, and community or other "freenets." There are literally thousands of Internet access providers in the United States; of the commercial providers, only a small number of the thousands of such providers are carriers or facilities-based providers.

To provide connectivity to the global Internet, an Internet access provider must connect directly or indirectly with an Internet backbone provider which provides the IP routing service for the Internet access provider. These connections are typically T-1 or

Chairman William E. Kennard
Robert Pepper
April 7, 1998
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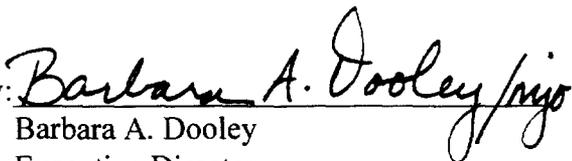
other leased line circuits; the local loop is typically purchased from an ILEC or CLEC and long-haul circuits are purchased from an interexchange carrier.

While a number of the largest U.S. backbone providers today are carriers, many national and regional U.S. backbone providers are not. Many of these companies are extremely large and important customers of carriers; among CIX members, which include many of the largest and growing backbone providers, I am aware of no non-facilities-based enhanced service provider which is engaged in self-provisioning of circuits. In the past three years, I am aware of one former CIX member, no longer in business, which attempted that model. CIX concludes that, of the thousands of commercial ISPs providing Internet access today, few, if any, are ISPs which "self-provision" circuits.

We strongly urge the FCC to continue to reduce regulation in the implementation of the Telecommunications Act of 1996 and to affirm its decision that Internet Service Providers are not obligated to make direct contributions to the Universal Service Fund. I am attaching to this letter a CIX position paper which provides further explanation of our position on the universal service fund report issues.

In accordance with the Commission's *ex parte* rules, two copies of this letter will be submitted to the Commission's Secretary.

Sincerely,

By: 
Barbara A. Dooley
Executive Director
Commercial Internet eXchange
Association

Enclosure

cc: John Nakahata
James Casserly
Paul Misener
Kyle Dixon
Paul Gallant
Richard Metzger
Regina Keeney

The FCC Should Not Back Away From Its Pro-Competitive Internet Policy

One of the major accomplishments of FCC policy during the Clinton Administration has been not to regulate the Internet. By adhering to the Commission's Enhanced Service Provider (ESP) exemption, the FCC has provided the basis for dynamic competition and growth in this new medium. This non-regulatory policy has been critical to the Internet's rapid development as the most promising avenue for convergence, for new forms of commerce, and for human communication.

As the Commission conducts yet another review of the 1996 Act's definitions of "information" and "telecommunications service" in the context of its universal service report to Congress, it should proceed with great care, with full process and opportunities for public comment, lest it undermine this important legacy and risk opening the door to broad regulation of the Internet.

1. Facilities-Based Internet Service

One Commissioner recently floated the notion that facilities-based Internet providers should pay universal service charges in the same way that telecommunications carriers do. While the general aim of this proposal is positive because it seeks to avoid Internet regulation except for payment of universal service charges, the proposal addresses a non-existent problem and would place the FCC's deregulatory legacy toward the Internet at risk:

- The proposal would be very difficult to contain. Establishing that facilities-based Internet service is telecommunications for purposes of USF would invite the FCC and other regulatory bodies to parse other types of Internet services, and to classify them as telecommunications as well.
- The proposal would prompt state PUCs to conduct similar reviews of Internet services, and to consider imposing licensing, rate regulation and other forms of regulation on a competitive medium that is singularly ill-suited to and unprepared for such regulation.
- As a recent Commercial Internet eXchange Association ("CIX") study filed with the FCC indicates, Internet service providers make significant contributions to support the PSTN. They already spend between 30% and 50% of *their annual revenues* on

payments to telecommunications carriers, from which the carriers must make payments directly into the federal and state USF funds.

- The proposal addresses a theoretical concern. The Commission hasn't identified a significant number of facilities-based Internet providers who do not already pay into USF. The additional USF contributions captured from such providers would be minimal.
- The existing system under which telecommunications carriers pay into USF does not create an appreciable incentive for ISPs to provide facilities-based, rather than leased-line, service. The decision whether to lease or to provide facilities-based service in different segments of a ISP's network is a much more complex question than arbitraging the small contribution to the USF fund.

2. Internet Telephony

The Commission is also examining Title II regulation of packet-switched Internet telephony.

- The Commission should gather more information about the nature of such services through an Notice of Inquiry before formulating policy to address the still-nascent Internet telephony business. For example, such services may include significant enhancements that will differ from traditional voice services.
- Classifying such services as "telecommunications" or regulating them would invite foreign governments to shut down Internet phone and other Internet providers for operating without a telecommunications license, thereby eliminating a very useful restraint on foreign settlement charges and aggravating the U.S. trade deficit.
- ISPs are not equipped to police the Internet and are prohibited by law from examining transient communications to know if an end user may be augmenting the ISP's service with the user's own Internet phone software. Accordingly, it is not appropriate to tax ISPs for these end user communications or to ask them to police this traffic.