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CC 96-98

**Ameritech**

July 17, 1998

**Gary L. Phillips**  
Director of Legal Affairs  
Washington Office

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, NW  
Room 222  
Washington, DC 20554

RECEIVED  
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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

**Re: Ex Parte Filing**  
**Docket CCB/CCP 97-30**

Dear Ms. Salas:

On Tuesday, July 14, 1998 and Wednesday, July 15, 1998, Lynn Starr, Executive Director - Federal Relations and I met, in separate meetings, with John Nakahata, Chief of Staff to Chairman Kennard, Tom Powell, Legal Advisor to Chairman Kennard, Kevin Martin, Legal Advisor to Commissioner Furchtgott-Roth, and Kyle Dixon, Legal Advisor to Commissioner Powell, to discuss reciprocal compensation. At those meetings, Ameritech used the attached as a basis for discussion. In addition, Ameritech noted that the vast majority (approximately 85%) of reciprocal compensation billings that have been submitted to Ameritech for ISP traffic are either from CLECs in the MCI/WorldCom/MFS/Brooks Fiber family or TCG. Ameritech also noted that at least one so-called CLEC, which has already submitted ISP reciprocal compensation billings exceeding \$1 million, does not offer originating local service.

Ameritech also briefly discussed state decisions regarding the status of ISP traffic. It noted that most of the states that have addressed the issue have either: (1) expressly acknowledged that the FCC will have the final say; or (2) based their findings on FCC precedent, such as the access charge exemption, albeit a misreading of that precedent. Ameritech noted that virtually all of the remaining decisions offer only the most minimal analysis - typically one paragraph - and that most of these were arbitration decisions that predated the filing of the ALTS petition at the FCC.

Ameritech urged the Commission to decide this issue expeditiously.

Sincerely,

*Gary L. Phillips*

Attachment

cc: J. Nakahata  
T. Power  
K. Martin  
K. Dixon

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**Ameritech Revenue Sharing Proposal**  
**CCB/CCP 97-30**

**I. Introduction**

When an end user transmits or receives messages over the internet through an ISP, the connection to the ISP is interstate access service. Normally (for non-exempt access traffic), when two LECs jointly provision access service, those carriers separately bill an agreed-upon portion of their access charges to the entity to whom such access is provided. This traditional approach, however, is not possible for ISP traffic because the FCC has largely exempted such traffic from its Part 69 access charge regime.<sup>1</sup> As a result of that exemption, ISP traffic is treated as local traffic for access charge purposes and billed at local call rates rather than access rates.

Ameritech now proposes that, for so long as, and to the extent this exemption applies, the Commission: (i) direct ILECs and CLECs to negotiate alternative revenue sharing arrangements for ISP traffic that take into account the effect of the access charge exemption; and (ii) establish guidelines to guide the parties in such negotiations.<sup>2</sup>

These guidelines should be based on the following core principles:

- Revenue sharing arrangements for ISP traffic should share the actual or implicit local revenues generated by that traffic. (Specific proposals to this end are described below.)
- Those ISP-related local revenues should be split on a 50/50 basis.
- The FCC should use "rocket-docket" procedures to ensure good faith negotiation and implementation of revenue sharing agreements.

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<sup>1</sup> The FCC has indicated that phone-to-phone internet telephony might be a telecommunications service, which would mean it is not subject to the current exemption.

<sup>2</sup> This proposal is intended to apply only to the extent that ISP traffic is treated as "local" for access charge purposes. If the Commission lifts the access charge exemption or devises a new, usage-based access charge, those access revenues would be subject to traditional meet-point or revenue sharing arrangements, not the 50/50 sharing arrangement proposed here.

## II. Proposal

Require revenue sharing in cases of joint provisioning – in particular, a sharing of local revenues attributable (directly or implicitly) to the ISP traffic – in accordance with the principles set forth below.

### A. Traffic Identification

LECs that deliver traffic to ISPs must be required to use their best efforts to identify such traffic and to share that information with LECs that originate such traffic. In identifying ISP traffic, the following preferences apply:

- Actual call data is preferred over estimated call data.
- Existing factoring methods that are used to estimate traffic, including factoring methods contained in carriers' approved interconnection agreements, are preferred over newly-established factors, but newly established factors may be substituted if the parties so agree.

### B. Compensation Amount

A LEC whose customers originate calls to an ISP (originating LEC) shall compensate a LEC who jointly participates in transmitting such calls (participating LEC) by  $\frac{1}{2}$  of the revenues that the originating LEC receives from its customers for such calls. Revenues attributable to ISP traffic should be calculated and shared using one of the three following methodologies, as applicable:

1. *If originating LEC receives revenues on a per-call or per-minute basis for ISP traffic: one-half of the revenues attributable to such traffic.*
2. *If originating end user pays measured rates only after a defined call allowance: one-half of the average per-call rate paid by all users on the same rate plan as the originating end user. (This would be calculated by adding total revenues from the flat rate plus total per-call revenues from additional calls and then dividing by the total number of calls from customers on the same rate plan).*
3. *If originating user pays flat-rated service: one-half of the implicit per-call rate as calculated using the following methodology:*

Step One: Originating LEC determines the portion of the customer's line rate that reflects local network usage, using either

cost data from state regulatory proceedings or by identifying a suitable proxy amount to reflect such usage.

Step Two: Originating LEC determines (by class of service, if possible) its average per-call revenue based on the amount determined in Step One. This determination should be based on typical usage characteristics of Internet-using customers, if available; otherwise, usage characteristics of all customers.

Step Three: Originating LEC pays the participating LEC one-half of the per-call revenue determined in Step Two multiplied by the number of Internet access calls (by class of service, if possible). In no event, may the total of such compensation exceed the amount determined in Step One.

**RECIPROCAL COMPENSATION TALKING POINTS**  
**CCB/CCP 97-30**

*Reciprocal compensation applies to "traffic that originates and terminates within a local area."*

**FCC Has Always Treated ISP Traffic as Access Traffic**

- Current treatment of ISP traffic dates back to 1983 when FCC created the Part 69 access charge regime. FCC decided to exempt ESPs from having to pay access charges. It did so on policy grounds - to avoid imposing rate shock on a fledgling industry.
  - Importantly, the FCC made it clear that *it nevertheless considered ESP traffic to be access traffic*: "Among the variety of users of access service are . . . enhanced service providers[.]"
- *Since then the FCC has continued to characterize ESP traffic as access traffic*. In 1987, it issued an NPRM in which proposed to lift the ESP access charge exemption. Obviously, it could not and would not have done so if it considered this to be "local" traffic. And lest there be any doubt, this is what the Commission said in that NPRM:

"We are concerned that the charges currently paid by enhanced service providers do not contribute sufficiently to the costs of the exchange access facilities they use in offering their services to the public. As we have frequently emphasized in our various access charge orders, our ultimate objective is to establish a set of rules that provide for recovery of the costs of exchange access used in interstate service in a fair, reasonable, and efficient manner from all users of access service, regardless of their designation as carriers, enhanced service providers, or private customers. Enhanced service providers, like facilities-based interexchange carriers and resellers, use the local network to provide interstate services. To the extent that they are exempt from access charges, the other users of exchange access pay a disproportionate share of the costs of the local exchange that access charges are designed to cover." (2 FCC Rcd at 4306)

- The FCC ultimately had to maintain the ESP exemption due to tremendous political pressure. The R&O cites policy grounds for

continuing the exemption. Never did it suggest that the traffic was "local."

- More recently, in the Access Reform Order the Commission again cited policy reasons to justify its decision to continue exempting ISPs from the access charge regime. It noted, for example, that, even with access reform, access charges are not, in all respects, cost-based. It also stated that LECs hadn't shown that they would face uncompensated costs if ISPs continued not to pay access charges - a statement which, of course, is absurd if ISP traffic is not only exempt from access charges, but triggers recip comp obligations.
- Notably absent from these decisions is a determination that traffic to ISPs is, in fact local traffic, rather than access traffic. Instead, in each case, the Commission granted or perpetuated an *exemption* from the access charge regime based solely on pragmatic and political considerations regarding the impact of existing access charges on the ISP industry. Moreover, in each case, the Commission specifically held out the possibility that access charges, albeit perhaps a modified, more cost-based access charge might be applied in the future.
- The OPP Working Paper "Digital Tornado" recognizes that ISPs do not now pay access charges because of this access charge exemption:

"Because Internet access is understood to be an enhanced service under FCC rules, ISPs are treated as end users, rather than carriers, for purposes of the FCC's interstate access charge rules. This distinction, created when the FCC established the access charge system in 1983, is often referred to as the "ESP exemption." (at 50)

### **Calls to ISPs are not separate, "local" calls, but part of a single, interstate transmission**

- CLECs - ignoring the reason ISPs do not pay access charges - claim that an Internet call actually consists of two calls - the call to the ISP and a separate call from the ISP to the Internet. They argue that an ISP's use of LEC facilities is analogous to a call to a librarian, who checks on the availability of a book by querying a database, or a travel agent, who makes another call to make a reservation and then relays the information back to the customer. These claims are wrong.
- They are inconsistent with FCC's own characterization of Internet traffic, wherein FCC made it clear that the user (not the ISP) accesses the Internet:

Non-Accounting Safeguards Order: "The Internet is an interconnected global network of thousands of interoperable packet-switched networks that use a standard protocol . . . to enable information exchange. An end-user may obtain access to the Internet from an Internet service provider, by using *dial-up or dedicated access* to connect to the Internet service provider's processor. The Internet service provider, in turn, connects the end-user to an Internet backbone provider that carries traffic to and from other Internet host sites."

OPP Working Paper 29 (Digital Tomado) describes in various places how *users* access internet sites (e.g. at 45: "One Internet "call" may connect the *user* to information both across the street and on the other side of the world[.]" "Users generally . . . access various Internet sites during the course of a single connection.") (See also at 18)

- They are also flatly inconsistent with longstanding principle that *for purposes of determining the boundaries of a communication, a communication "terminates" at its ultimate destination, not at an intermediate switching point.*
  - Teleconnect:<sup>1</sup> LECs argued that service involved 2 calls because user had to dial two different numbers and since first end was provided by contract between AT&T and Teleconnect and second end was provided by contract with customer.

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<sup>1</sup> Teleconnect background: When the CCL was first established, the originating and terminating CCL charges were the same. During the 1980s to prevent uneconomic bypass, the FCC decided to reduce originating CCL charges and raise the terminating CCL 800 calls, though, presented a problem since 800 calls were usually terminated on a special access line ( a closed end). To remedy situation, FCC held that for calls with just 1 open end, the higher CCL rate should be assessed on whichever end was open. AT&T then introduced ReadyLine service, which terminated on open end. To originating LEC, this looked like normal 800 call and it assessed higher CCL. To terminating LEC, it looked like MTS call, and it assessed higher CCL. FCC held that it was unlawful to assess higher CCL on both originating and terminating end and required accounting

Teleconnect provides nationwide 800 travel service. Call is initiated by end user on open end and is routed to AT&T Megacom 800 line. It is then carried by AT&T, delivered to LEC, which switches it to Teleconnect. Teleconnect then sends the call over a private line to the terminating LEC, which terminates the call on an open end. The caller must dial a second number at the Teleconnect switch. Teleconnect claims this is like ReadyLine - a single call . LECs claimed that there were two calls: the first 800 call which was placed on an open end and terminated on a closed end to Teleconnect's switch, followed by a second call, which originated on a closed end at Teleconnect's switch and terminated on an open end.

CCB: “[T]here is an assumption that an interstate communication extends from the inception of a call to its completion. We are guided by that principle here. Just as Commission regulation does not end with an intermediate switch, neither does the character of [a] call change at [an] intermediate switch.” ¶ 24.

FCC: “We agree with the Bureau that a caller using the Teleconnect ACA service is making a single call. As the Bureau correctly noted, both court and Commission decisions have considered the end-to-end nature of the communications more significant than the facilities used to complete such communications. . . . [T]he interstate communication itself extends from the inception of a call to its completion, regardless of any intermediate facilities.” ¶12.

“In general all of the defendants’ arguments ignore the fact that ACA service conveys a single communication from the caller to the called party. Indeed, from the caller’s point of view, any intermediate switching during the call is, as Teleconnect claims, ‘transparent.’ The record reflects that the user of ACA service intends to make a single call terminating not at the Teleconnect intermediate switch, where the Megacom link ends, but at the telephone line of the called party.” ¶ 14.

- BellSouth Voicemail Preemption Case: FCC rejected argument that a call to a voice mail service involves two separate, jurisdictionally distinct calls: (i) the call to the telephone company switch; and (ii) the call from the local switch to the voice mail apparatus. Rather, the FCC found that there is a single interstate communication, the jurisdictional boundaries of which were defined by the location of the caller and the voice-mail equipment the caller was accessing.

“[W]hen a caller is connected to BellSouth’s voice mail service . . . there is a continuous two-way transmission path from the caller location to the voice mail service.” ¶9

“The language of the Act . . . contradicts the narrow reading of our jurisdiction urged by the states that would artificially terminate our jurisdiction at the local switch and ignore the ‘forwarding and deliver of [the] communications’ to the ‘instrumentalities, facilities, apparatus and services’ that comprise BellSouth’s voice mail service. ¶ 11.

“Jurisdiction over interstate communications does not end at the local switchboard, it continues to the transmission’s ultimate destination.” ¶ 12

## **Calls to ISPs are technically identical to FG-A Access Service**

- *There are characteristics of Internet traffic that are shared by local calls. For example, LECs carry this traffic over local interconnection trunks and ISPs return answer supervision. But none of the characteristics cited are unique to local traffic. All are shared by some form of interstate access traffic. For example, LECs provide FG-A over local interconnection trunks and IXCs return answer supervision. Likewise, LECs terminate interstate calls using remote call forwarding interim number portability arrangements over local interconnection trunks, and no one would suggest that such traffic is therefore "local." The trunks don't define the traffic.*
  - **§ 6.8.11 of our FG-A access tariff in Illinois: "Calls from end users to the seven digit local telephone numbers associated with Feature Group A Switched Access Service are subject to Telephone Company local and/or general exchange service tariff charges[.]"**
- **It has also been argued that LECs have treated the traffic as local for separations and ARMIS reporting purposes. The same was also true of FG-A for a period following implementation of the access charge rules. Also, until recently the amount of ISP traffic was believed to be small and would not have affected other rates given the rough justice nature of separations.**

## **A Decision that CLEC Traffic is Local Would Make Terrible Public Policy**

- **Recip comp would not advance local competition; it may help some CLEC profits but it doesn't encourage CLEC entry into local business or residential markets. CLECs will enter those markets based on their business cases for local exchange services, not based on windfall profits from Internet traffic.**
- **In fact, the availability of recip comp for Internet traffic reduces the incentive of CLECs to enter local mkt on a facilities basis, because if they serve an end user with their own switching, they don't get recip comp when they deliver traffic to an ISP.**
- **On the other hand, if CLEC resells Ameritech service and originates ISP traffic, which is handed off to another CLEC, Ameritech gets only the wholesale local exchange rate and it pays full recip comp.**
- **Convergence of Internet and telephony.**
- **FCC cedes jurisdiction over critical component of Internet traffic. Also precludes FCC from imposing some form of modified access charge or of phasing in access charges, as they are brought down to cost.**

- The FCC's conclusion that existing access charges should not apply is not tantamount to a conclusion that no form of access charge is appropriate.  
*Digital Tornado: "The notion of usage charges should be distinguished from current interstate access charges. . . . The real question is whether ISPs should pay some new cost-based usage charge."*
- Inefficiencies: CLECs get far more than their costs or even the costs saved by ILECs. See Exhibit comparing payments w/terminating costs.
- MFN rights act perversely: in contrast to the forward looking economic cost methodology the FCC has embraced for other purposes, CLECs are able to obtain the rate that applies to the least efficient competitor, the competitor whose costs of terminating local traffic are highest.
- Recip comp was meant to establish a level playing field, not a windfall that is tantamount to a subsidy.
- Increases the subsidy that voice access makes to the Internet.