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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket #96-98
CCB/CPD #97-30

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

In the matter of	)	
	)	
Request of Association for Local Telecommunications Services for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic	)	CPD 97-30

REPLY COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits its reply comments in the above-referenced proceeding.[1] As shown below, the comments in this proceeding confirm that the Commission should act now to prevent incumbent local exchange carriers ("ILECs") from avoiding their statutory reciprocal compensation obligations. ILEC efforts to exempt traffic bound for Internet service providers from compensation obligations are but the tip of the iceberg. Indeed, the ILEC comments reveal that they believe that reciprocal compensation should not apply in many circumstances beyond those that are the subject of this proceeding. The Commission should prevent the ILECs from chipping away at their reciprocal compensation obligations in this way.

Argument

Most commenters in this proceeding urged the Commission to grant the ALTS request. These commenters demonstrated that it is permissible as a matter of law and

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[1] *See* "Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic," *Public Notice,* CCB/CPD 97-30, rel. Jul. 2, 1997. By a separate order, the Commission extended the reply comment deadline to July 31. *See* Order, CCB/CPD 97-30, rel. Jul. 22, 1997.

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appropriate as a matter of policy to ensure that carriers are compensated for terminating local calls to Internet service providers.[2] Only the ILECs and their trade association argue otherwise, but their claims are refuted by the showings made by the other parties.

Because other parties already have demonstrated the legal, factual and policy deficiencies in the ILEC arguments in the context of this proceeding, these reply comments focus on an important, broader issue raised by the ILEC comments. Several ILECs argue that calls to Internet service providers should not be subject to terminating compensation because they result in imbalanced traffic.[3] This position is contrary to the explicit direction of Congress and is inconsistent with the Commission's policy goals. Moreover, if adopted, the ILEC position would eviscerate the reciprocal compensation principles adopted across the country in recent years. This proceeding is the Commission's first opportunity since it adopted its initial local competition rules a year ago to affirm that reciprocal compensation is an obligation of all carriers, and not an obligation that ILECs can avoid at will. Thus, as urged by Vanguard in its initial comments, the Commission should grant the ALTS request as soon as practicable.

The ILECs are quite direct in expressing their view that "imbalanced" traffic is not entitled to terminating compensation. SNET claims that "[t]he main assumption behind reciprocal compensation is that originating and terminating usage would balance out between

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[2] *See, e.g.*, Comments of America Online at 1-5, Comments of Hyperion at 3-5.

[3] *See* Comments of Southern New England Telephone at 2-3 (reciprocal compensation obligation assumes balanced traffic between carriers); Comments of Ameritech at 15-16 (compensation for calls to Internet service providers inappropriate because they only terminate calls).

the parties."[4] On that basis, SNET argues that "[r]eciprocal compensation was not meant to address" situations in which a single customer predominantly or exclusively receives calls, rather than making them. Similarly, Ameritech suggests that, because Internet traffic is not balanced, requiring originating carriers to pay terminating compensation for calls to Internet service providers "would further distort Internet access pricing."[5]

These arguments seriously distort the nature of the reciprocal compensation obligation. The reciprocal compensation requirement exists because Congress recognized that traffic between any two carriers will not necessarily balance. This was a perfectly reasonable conclusion. Indeed, very few customers will have exactly balanced traffic in any given month or year and some types of customers never will have balanced traffic.[6] Some customers will originate more calls than they terminate and others will terminate more calls than they originate. To the extent that ILECs were correct in arguing, in the Commission's local competition proceeding and elsewhere, that there are significant costs incurred in terminating calls, then it is incumbent upon the Commission to ensure that carriers recover those costs through terminating compensation.

The ILEC argument that balance is a necessary prerequisite to compensation turns the reciprocal compensation requirement on its head. In effect, the ILECs are asking the Commission to hold that reciprocal compensation applies only when little or no compensation

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[4] Comments of SNET at 2.

[5] Comments of Ameritech at 15.

[6] In addition to Internet service providers, these customers include restaurants that offer delivery service, ticket sales services, many government agencies, and outbound telemarketers.

will be paid by the originating carrier. This argument is particularly ironic because it comes from carriers that, as recently as last year, vigorously asserted that they had to be compensated for every single minute of traffic carried over their networks.

Moreover, if the ILEC argument were adopted, it would be difficult for the Commission to draw a meaningful line defining when the reciprocal compensation obligation applies and when it does not. While the ILECs might argue that the Commission can adopt a bright line test because Internet service providers overwhelmingly terminate traffic, that does not make them any different from a host of other entities that also receive many calls but make very few calls of their own. At the same time, any test the Commission might adopt to implement a rule denying reciprocal compensation for traffic to customers who predominantly terminate traffic would be subject to significant abuse. In fact, to enforce such a rule, carriers would have to devote significant resources to determining what calls were directed to entities for which compensation could be paid and what calls were directed to entities for which compensation could not be paid.[7]

The Commission can avoid these difficulties by upholding the Congressional intent to apply the reciprocal compensation obligation to all calls that originate and terminate within the local calling area, regardless of who the customers originating and terminating the calls may be and regardless of the service the customers purchase. The Commission should make every effort to avoid repeating the decade-long, futile experiences of CMRS providers attempting to obtain reciprocal compensation from ILECs by affirming this principle now.

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[7] Ameritech's comments suggest some of the difficulties of identifying traffic that fails to meet arbitrary requirements for obtaining terminating compensation. Comments of Ameritech at 17 n. 27.

Failure to do so only will lead to years of regulatory uncertainty, such as that faced by CMRS providers, with commensurate effects on the development of competition in the telecommunications marketplace. Thus, swift action to grant the ALTS request is essential.

Conclusion

For all these reasons, Vanguard Cellular Systems, Inc. respectfully requests that the Commission act on the ALTS request in accordance with these reply comments.

Respectfully submitted,

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July 31, 1997

CERTIFICATE OF SERVICE

I, Tammi A. Foxwell, of the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 31st day of July, 1997, I caused copies of the foregoing "Reply Comments" to be served via first-class mail, postage prepaid (except where indicated as via hand-delivery), to the following:

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