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CC Docket A96-98
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Request by ALTS for Clarification of the)
Commission's Rules Regarding Reciprocal) CCB/CPD 97-30
Compensation for Information Service)
Provider Traffic)

REPLY COMMENTS OF
SOUTHWESTERN BELL TELEPHONE COMPANY,
PACIFIC BELL AND NEVADA BELL

The SBC Communications Inc. telephone companies, Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell (SBC), by their attorneys, respectfully file these Reply Comments in response to comments filed July 17, 1997 by several parties to this proceeding, as requested by the Commission's July 2, 1997 Public Notice (DA 97-1399). The United States Telephone Association (USTA) and eleven Local Exchange Companies (LECs) filed Comments showing conclusively that Internet traffic should – and must, under controlling legal precedent – be treated as jurisdictionally interstate in nature, and therefore should not be subject to the reciprocal compensation requirements of the 1996 Telecommunications Act.¹ None of the parties filing comments herein expressing a contrary view has produced any well-founded basis for a different result.

The great majority of arguments advanced by commenting parties that seek reciprocal compensation to attach to Internet Service Provider (ISP) traffic were already addressed and debunked in the USTA/LEC Comments. Another large portion of these

¹ 47 U.S.C. Section 251(b)(5).

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parties' arguments are baseless on their face and require no rebuttal; SBC will not waste the Commission's time by responding to these arguments.

Although equally baseless, a few arguments raised by these commentators do warrant at least a brief reply, to ensure that the Commission is not misled. For example, a number of these commentators (almost all of whom, not coincidentally, are Competitive Local Exchange Carriers (CLECs)) assert incredulously that the LECs' refusal to pay terminating reciprocal compensation for ISP calls is somehow anticompetitive.² Shamelessly, Brooks trumpets that "[t]he CLECs have achieved considerable success in marketing their services to ISPs, with the result that substantially more traffic flows from ILEC [Incumbent LEC] customers to ISPs served by CLECs, than from CLEC customers to ISPs served by ILECs."³

The most obvious flaw in this pleading tactic, of course, is the complete lack of any empirical evidence whatsoever offered by Brooks in support of its stark assertion. Perhaps less obvious but just as fatal to its position is the common sense reason that CLECs may have made significant gains in signing up ISPs in recent months – they have been counting on being paid by ILECs to “terminate” calls originating on ILEC networks and bound for the Internet, so they of course could afford to offer ISPs incredible discounts off of the normal rates for this service. ILECs, of course, generally have not (at least not knowingly) charged CLECs or anyone else terminating compensation for such calls when originated on the networks of others (since, as shown in the USTA/LEC Comments, such calls in fact are not “terminated” at all until they reach their Internet end-point destination), so ILECs of course have never been in the position to and have not

² E.g., Brooks, pp. 2-4 and n. 10.

offered ISPs such wonderful discounts. Another factor that these CLEC commentators overlook entirely is the unassailable fact that, in any event, as long as the ILEC is not charging anyone else for “terminating” incoming Internet calls that ILECs pass on to the ISP, it cannot possibly be “anticompetitive” to also refuse to pay others for passing such calls along after they have originated on an ILEC network. To SBC’s knowledge, not a single ILEC is taking the position that it should be paid terminating compensation for incoming ISP traffic but should not pay others for outgoing ISP traffic.

Another ruse foisted off on the Commission by certain parties herein is the painfully transparent argument that ILECs’ affiliated ISP operations somehow have a competitive advantage over competing ISPs if no reciprocal compensation is paid within the industry for ISP traffic.⁴ They argue that not requiring the payment of terminating compensation for Internet-bound traffic would advantage the ILECs because it supposedly would, “in effect,” force ISPs to obtain dial-up connections to the public switched network from ILECs.⁵ But of course the whole basis for this trumped-up claim is the presumption that there would be something wrong with CLECs not having the competitive advantage of being paid “terminating” compensation by ILECs for this Internet traffic that CLECs are not really terminating in the first place. The Commission should see through these flimsy arguments and reject them summarily.

Several commentators claim that ISPs are just like other businesses such as pizza delivery and taxi dispatch.⁶ ISPs, however, unlike the aforementioned businesses, are

³ Id., n. 10.

⁴ Adelphia, pp. 9-10.

⁵ Id.

⁶ Id., p. 8.

providing interstate services.⁷ Certain parties attempt to confuse the application of this legal precedent with irrelevant technical details like identifying the point at which answer supervision is provided.⁸ These arguments cannot overcome the fact that the Commission and the courts have already dealt with the role of intermediate switches in the provision of an end-to-end call, and have concluded that they do not determine the jurisdictional nature of a call.⁹

The FCC's access charge plan permits all Enhanced Service Providers (ESPs) to use intrastate local exchange services and permits ESPs to pay intrastate prices for their interstate use of the network.¹⁰ The Commission established this interstate access arrangement for ESPs through its access charge orders in Docket 78-72 and reaffirmed this decision in the Access Reform Order.¹¹ To the extent an ISP is providing an enhanced service, the ISP qualifies for the ESP interstate access arrangement. But the benefits of the interstate access arrangement that the Commission has extended to ISPs must not be

⁷ Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Notice of Proposed Rulemaking, CC Docket 87-215, released July 17, 1987, para 7 ("Enhanced service providers, like facilities-based interexchange carriers and resellers, use the local network to provide interstate services").

⁸ Teleport, pp. 4-5.

⁹ MTS and WATS Market Structure Memorandum Opinion and Order, CC Docket No. 78-72 Phase 1, released August 22, 1983, para 79 ("in each case the [enhanced service] user obtains local exchange services or facilities which are used, in part or in whole, for the purpose of completing interstate calls which transit its location and, commonly, another location in the exchange area. At its own location the user connects the local exchange call to another service or facility over which the call is carried out of state").

¹⁰ MTS and WATS Market Structure Memorandum Opinion and Order, CC Docket No. 78-72 Phase 1, released August 22, 1983, para 80 ("of the many entities that now use access service, some are currently paying relatively higher carrier usage charges, through either the settlements/division of revenue process or ENFIA rates, while others are obtaining exchange access at ordinary business local exchange service rates, which can be quite low in comparison, particularly in areas which have not implemented local measured service").

¹¹ Access Charge Reform, CC Docket 96-262, First Report and Order, released May 16, 1997, para 344 ("the existing pricing structure for ISPs should remain in place, and incumbent LECs will not be permitted to assess interstate per-minute access charges on ISPs").

confused with the Act's requirement for carriers to compensate each other for the exchange of local traffic.

An ILEC providing intrastate services to an ISP through the FCC's ESP exemption is compensated for the interstate use of its network through the intrastate charges it receives from the ISP. The same interstate compensation structure applies when a CLEC serves an ISP. If the CLEC serving an ISP was also paid terminating compensation by the ILEC serving the ISP's subscriber that would constitute a windfall. This is precisely the outcome the Commission must avoid. The Commission must require CLECs to seek their compensation for ISP interstate use of their services from the ISPs and not force the ILEC serving the ISP's subscriber to pay for the ISP's serving arrangement.

As explained clearly and succinctly in the USTA/LEC Comments, and for all the reasons set forth therein, Internet traffic is inherently interstate in nature (or, at the very least, is interexchange and should be treated as one or the other, all facts and applicable law considered), and therefore under the rationale of this Commission itself should not (indeed, cannot) properly be the subject of reciprocal compensation under the Telecommunications Act of 1996.¹² Despite their mighty efforts to stretch the facts into the opposite direction, the CLECs have failed to rebut that one, determinative fact.

Should the Commission choose to issue a decision on the issue in this proceeding, the decision must be that terminating compensation is not owed by the originating carrier

¹² First Report and Order in CC Docket No. 96-98, August 8, 1996, para. 1034 (“[w]e find that the reciprocal compensation provisions of section 251(b)(5) for transport and termination of traffic do not apply to the transport or termination of interstate or intrastate interexchange traffic”).

to an intermediate carrier that accepts incoming Internet traffic from the originating carrier and merely passes it on to an ISP on its way to the ultimate Internet destination(s).

Respectfully submitted,

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Certificate of Service

I, Elaine Temper, hereby certify that Southwestern Bell Telephone Company, Pacific Bell & Nevada Bell rely comments to CCB/CPD 97-30 have been served this 31st day of July, 1997 to the Parties of Record.

A handwritten signature in cursive script that reads "Elaine Temper". The signature is written in black ink and is positioned above a solid horizontal line.

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