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CC Docket #96-8

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

COMMENTS OF SPECTRANET INTERNATIONAL

SpectraNet International ("SNI"), by its attorneys, submits these comments in response to the request by the Association for Local Telecommunications ("ALTS") that the Commission clarify its rules regarding inclusion of local calls to Internet Service Providers ("ISPs") as part of reciprocal compensation arrangements among local exchange carriers ("LECs").[1]

SNI agrees with ALTS that calls to an ISP utilizing local exchange facilities are local telecommunications services under the Communications Act. While it is correct that Internet services themselves are "information services" under the Act—and jurisdictionally interstate under established Commission precedent—"dial-up" calls to ISPs are telecommunications services provided by LECs to ISPs as end user customers. These dial-up local services are functionally and jurisdictionally separate from the "enhanced" Internet access services provided by ISPs to their own customers, and therefore fully qualify for reciprocal compensation among LECs under Section 251(b)(5)

[1] SNI is a facilities-based competitive LEC, certified by the California Public Utilities Commission, that is presently deploying broadband, fiber-optic networks in several major California urban and suburban markets.

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of the Act, 47 U.S.C. § 251(b)(5), and Section 51.701(a) of the Commission's Rules, 47 C.F.R. § 51.701(a).

DISCUSSION

The ALTS request[2] arises from recent actions by several Regional Bell Companies that have determined, unilaterally, not to compensate competitive local exchange carriers ("CLECs") for local calls originated by incumbent LEC ("ILEC") customers to ISPs, where the ISPs purchase local business service lines from the CLEC in order to provide "dial-up" Internet access. ALTS recites that Bell Atlantic and NYNEX have taken this position,[3] but as the attached June 16, 1997 letter from Pacific Bell to SNI demonstrates, others have done so as well.[4]

These unilateral RBOC refusals to pay reciprocal compensation to CLECs are improper for the two basic reasons cited by ALTS. First, the RBOCs treat local calls to ISPs, where both the calling party and the ISP are incumbent LEC ("ILEC") customers, as local exchange traffic for jurisdictional purposes, rating and billing such calls under their state-approved local exchange tariffs. Thus, the RBOC treatment of CLECs, which is different from the RBOCs' treatment of calls to their own ISP end user customers, is discriminatory in violation of Sections 201(b) and 202(a) of the Act.

Second, and more significantly, the RBOCs have confused jurisdictional treatment of Internet access services, provided by ISPs to their customers, with local exchange services sold by LECs to ISPs. Where a LEC provides local business lines to

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[2] Letter from Richard J. Metzger, ALTS, to Regina M. Keeney, FCC, dated June 20, 1997 ("ALTS Request").

[3] Id. at 4.

[4] Letter from P. Doug Garrett, Pacific Bell, to Kevin Timpane, SpectraNet, dated June 16, 1997 (Attachment "A" hereto).

an ISP for purposes of "dial-up" Internet access, the service being provided is the local exchange telecommunications service allowing analog voice-grade connectivity between two local callers. The LEC provides this service to the ISP as an end user customer; the ISP, in turn, bundles local exchange services together with the "enhanced" digital data services (database access, protocol conversion, store-and-forward functionality, packet-switched routing, etc.) that constitute TCP/IP based Internet access. Whether or not the Internet services provided by the ISPs to their customers are jurisdictionally interstate, and thus exempt from the reciprocal compensation obligations of ILECs for exchange of local "telecommunications" traffic, calls made to the ISP are plainly both local and telecommunications. Where a CLEC provides dial-up local lines to an ISP, it is the ISP that is providing the enhanced Internet service, not the CLEC.

SNI does not disagree with the RBOCs that ISP services are both "enhanced" services under the Commission's Rules and may properly be classified as interstate services for jurisdictional separation and regulatory purposes. As Netscape and AT&T, among others, have argued in connection with the Commission's deliberations on universal service and its recent Notice of Inquiry into Internet traffic, the same "10%" rule applied to classify mixed-use private line services as jurisdictionally interstate—where at least 10% of the traffic on a special access or private line facility is interstate[5]—applies in full force to Internet services. Because virtually all Internet traffic is routed to one of two Metropolitan Area Exchanges ("MAEs") nationwide for routing to the

[5] See 47 C.F.R. § 36.154(a); MTS and WATS Market Structure, 4 FCC Rcd. 5660 (1989).

Internet backbone, Internet transmissions—even e-mail destined to a neighbor—are inherently interstate.

Yet jurisdictional classification of the Internet this does not justify the RBOCs' unilateral refusal to pay reciprocal compensation for local dial-up traffic to ISPs served by CLECs. Initially, the Commission has not ruled that the Internet is jurisdictionally interstate. As ALTS notes, the Commission's Internet NOI asked for comment on whether the traditional classification of Internet "dial-up" usage of local loops as a local exchange service should be reconsidered in light of the technical characteristics of the Internet and concerns over congestion of the Public Switched Telecommunications Network ("PSTN").[6] Unless and until the Commission acts on the proposals of Netscape and AT&T, and classifies all Internet services as jurisdictionally interstate, the RBOCs have jumped the gun. The proper approach, instead of unilaterally reinterpreting Commission rules in order to deny reciprocal compensation to CLECs, is for the RBOCs to seek a declaratory ruling from the Commission prior to changing the jurisdictional classification of local dial-up PSTN services for reciprocal compensation purposes.

Moroever, even if the Commission had already decided that Internet services are interstate jurisdictionally, that still would not support the RBOCs' position. Again, where a CLEC (or ILEC) provides local exchange services to an ISP, it is serving the ISP as a local loop customer. Whatever the ISP does with the traffic received on those loops is irrelevant to the ILECs' reciprocal compensation obligations, because the service

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[6] ALTS Request at 3, citing Usage of the Public Switched Network by Information Services and Internet Access Providers, Notice of Inquiry, CC Docket No. 96-263, ¶¶ 282-90 (Dec. 24, 1996).

provided to the ISP is an end user, local exchange service. Thus, for the RBOCs to be correct, the Commission would have to rule that the underlying local loop services sold by LECs to ISPs—in addition to the Internet data services sold by ISPs to their customers—are interstate services. Such a step, with the required preemption of state public commission jurisdiction, is warranted under existing law and may well be in the public interest, but it is one the Commission clearly has not yet taken.

CONCLUSION

The Commission should grant the ALTS request and rule promptly that, unless and until the Commission reclassifies local calls to ISPs as interstate for jurisdictional purposes, RBOCs are obligated to pay reciprocal compensation on such traffic to CLECs.

Respectfully submitted,

By: _____

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Dated: July 17, 1997.

ATTACHMENT A

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PACIFIC BELL
A Pacific Telesis Company

Date June 16, 1997

Kevin Timpane
Vice President Public Policy
SpectraNet International
93333 Genesee Ave., Suite 200
San Diego, CA 92121

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

Dear Mr. Timpane:

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 we properly bill for this Internet traffic.

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. As such, we do not intend to request, nor do we intend to 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 approach 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 415-542-3010.

Sincerely,

P. Doug Garrett

cc: M.E. Arbues, L. Cooper, M.D. Ard, L.M. Bauman, T.L. Cabral

CERTIFICATE OF SERVICE

I, Kenneth J. Cerniglia, do hereby certify on this 17th day of July, 1997, that I have served a copy of the foregoing document via messenger to the parties below:

Kenneth J. Cerniglia

Kenneth J. Cerniglia

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