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

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

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**COMMENTS OF AMERICA ONLINE, INC.**

America Online, Inc. ("AOL"), by its attorneys, hereby submits its comments to the June 20, 1997, request of the Association for Local Telecommunications ("ALTS") for clarification of the Federal Communications Commission's ("Commission" or "FCC") rules regarding the rights of a competitive local exchange carrier ("CLEC") to receive reciprocal compensation for the transport and termination of local information service provider ("ISP") traffic.<sup>1/</sup> For the reasons stated herein, AOL respectfully asks that the Commission affirm that its reciprocal compensation rules apply to all local traffic, including ISP traffic, and to all local exchange providers, including CLECs.

**INTRODUCTION AND SUMMARY**

As the world's leading provider of Internet online services,<sup>2/</sup> AOL strives to ensure that its members receive service in the most efficient, reliable, and economical manner possible,

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<sup>1/</sup> FCC Public Notice, "Pleading Cycle Established for Comments on Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic," CCB/CPD 97-30 (rel. July 2, 1997).

<sup>2/</sup> Founded in 1985, AOL serves over 8 million members and provides local dial-up access to consumers for its service in roughly 700 cities worldwide. AOL provides consumers with

without regard to the underlying technology used. To this end, AOL strongly supports rules and policies designed to promote the competitive deployment of data-friendly transmission technologies and capabilities.

The Telecommunications Act of 1996 ("1996 Act") seeks to open "all telecommunications markets to competition."<sup>3/</sup> No telecommunications market has been more resistant to competition than the market for local services, which has been dominated by monopoly providers for nearly a century. Therefore, the development of competitive, data-friendly local networks encompassing "the last mile" to subscriber premises is critical to preserving and accelerating growth, innovation and new services in the Internet online services business. Not only do CLECs help spur the deployment of new data-friendly local network facilities, but these new entrants also introduce price competition into local markets which for decades have been characterized by monopoly pricing. For these reasons, AOL has been, with increasing frequency, utilizing the local telecommunications services offered by CLECs in connection with the transport and termination of online services traffic between subscriber premises and AOL network local connection points.

As illustrated by the instant Request for Clarification filed by ALTS ("ALTS Petition"), some incumbent local exchange carriers ("ILECs") are fiercely resisting the local competition mandate established in the 1996 Act. Those ILECs who are starting to refuse to pay

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original programming and informative content, E-mail and access to the World Wide Web and information databases, electronic magazines and newspapers, and opportunities to participate in online "chat" conferences, which collectively offer an interactive community that enhances learning, personal communication, and productivity.

<sup>3/</sup> H.R. Conf. Rep. No. 104-458 at 1.

compensation for the transport and termination of ISP-bound traffic on CLEC networks are violating Commission rules and policies that are both well-established and unambiguous. Under the 1996 Act, ILECs must pay compensation for local telecommunications traffic that originates on their networks and terminates on CLEC networks. Local calls to ISP network connection points have consistently been treated as local traffic by the Commission since 1983, and nothing in the 1996 Act altered this policy. Indeed, the ILECs themselves have, in other proceedings, expressly characterized such calls as local traffic. Their refusal to compensate CLECs for termination of ISP-bound local traffic manifestly breaches one of the fundamental pro-competitive requirements of the 1996 Act.

The ILECs' efforts to exclude ISP-bound local traffic from the reciprocal compensation requirements also violate the Communications Act bedrock prohibitions against unjust and unreasonable discrimination. The ILECs have singled out a particular category of traffic -- ISP-bound traffic -- terminated by a particular category of carrier -- CLECs. These same ILECs apparently do not object to paying reciprocal compensation for non-ISP traffic terminated on CLEC networks or ISP-bound traffic terminated on adjacent ILEC networks. Thus, the ILECs seek to discriminate unreasonably and unjustly between two similar types of multi-line or T1 end-users purchasing the same local service: ISPs and non-ISPs. Likewise, the ILECs seek to discriminate unjustly and unreasonably discriminate between multi-line or T1 traffic bound for two similar types of end users: ISPs served by CLECs versus ISPs served by ILECs. Neither of these practices accords with the non-discrimination requirement of Section 202(a) of the Communications Act.

The ILECs' position is particularly self-serving when viewed in the context of the FCC's past rulemakings. Throughout the FCC's Local Competition proceeding, the ILECs steadfastly opposed suggestions that the Commission facilitate the use of "bill and keep" as a means of satisfying the 1996 Act's mutual compensation requirements.<sup>4/</sup> Instead, the ILECs sought to ensure that carriers would actually compensate one another for the termination of traffic on their respective networks.<sup>5/</sup> Now, having realized that they will not necessarily be the beneficiaries of these arrangements in every instance, the ILECs complain that it is somehow "unfair" for CLECs to be compensated for terminating traffic. In effect, what the ILECs seek to do is eliminate the incentive for CLECs to offer services to ISPs, thereby forcing ISPs to rely solely upon the ILECs' end-to-end networks. Such a result is directly at odds with the fundamental goals of the 1996 Act and should be soundly rejected.

The ILECs' refusal to compensate CLECs for the transport and termination of traffic bound for ISP networks hampers competition by raising CLECs' costs and hindering their ability to serve an important segment of the local market – Internet online service providers. Endorsing the ILECs' refusal to abide by the reciprocal compensation rules thus reduces the competitive choices for local telecommunications services available to AOL and other ISPs, and prolongs their dependence on ILEC networks in order to reach their customers' premises.

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<sup>4/</sup> In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, 11 FCC Rcd 15499, 16047, 16050-51 (1996), stayed in part pending review, Iowa Utility Board v. FCC, No. 96-3406 (8<sup>th</sup> Cir. filed Oct. 15, 1996), application to vacate denied, \_\_\_ U.S. \_\_\_, 117 S. Ct. 429 (Nov. 12, 1996) ("Local Competition Order") (noting ILEC objections to "bill and keep").

<sup>5/</sup> See id.

Notably, the ILECs' strategy is aimed specifically at disrupting the migration of ISP traffic to CLEC networks and will therefore foster ILEC control of the Internet online service business by facilitating the ILEC role as data transmission gatekeepers. By blunting the emergence of new entrants in the local market, the ILECs could exploit ISP dependence on their local monopoly networks in order to gain an unfair advantage in the Internet online services business.<sup>6/</sup> Moreover, strategies that deter ISP migration to CLEC networks buy the ILECs time to deploy new data transmission technologies and capabilities that are designed to subsume functions performed today by ISPs.<sup>7/</sup> Thus, sanctioning ILEC refusal to pay reciprocal compensation for ISP-bound traffic not only would help preserve the ILECs' monopoly power in their core business, it also would enhance their ability to compete unfairly in the adjacent, competitive Internet online services business.

## ARGUMENT

### **I. THE 1996 ACT AND THE COMMISSION'S LOCAL COMPETITION ORDER MANDATE THAT TELECOMMUNICATIONS CARRIERS MUST COMPENSATE EACH OTHER FOR THE TRANSPORT AND TERMINATION OF ALL LOCAL TRAFFIC, INCLUDING ISP TRAFFIC**

The 1996 Act requires that telecommunications carriers compensate each other for the transport and termination of all local traffic, without qualification.<sup>8/</sup> This reciprocal

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<sup>6/</sup> See In the Matter of Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Inquiry ("NOI"), CC Docket No. 96-263, Comments of America Online, Inc. at 37-42 (filed March 24, 1997) ("AOL NOI Comments").

<sup>7/</sup> Id. at 21, 41-42.

<sup>8/</sup> 47 U.S.C. § 251(b)(5) (all LECs have the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications"); 47 U.S.C. § 252(d)(2)(a) (requiring each telecommunications carrier to compensate the other carrier for the

compensation obligation applies every time one carrier terminates local traffic on another carrier's network.<sup>9</sup> Neither the 1996 Act, nor its corresponding legislative history, provide an exception for local calls placed to local exchange service end users which happen to be ISPs.

In the Local Competition Order, the Commission explicitly describes the circumstances that trigger the reciprocal compensation obligation. The Commission first concludes that Section 251(b)(5) reciprocal compensation obligations apply to "[t]elecommunications traffic between a LEC and a telecommunications carrier . . . that originates and terminates within a local service area."<sup>10/</sup> The Commission further provides that reciprocal compensation for the transport and termination of calls applies to "a situation in which two carriers collaborate to complete a local call."<sup>11/</sup> Specifically, the Commission envisions a reciprocal compensation arrangement whereby the "local caller pays charges to the originating carrier, and the originating carrier must compensate the terminating carrier for completing the call."<sup>12/</sup>

This language clearly encompasses the relationship between telecommunications carriers in transporting and terminating ISP traffic for purposes of establishing a reciprocal compensation

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costs associated with the transport and termination on each carrier's network facilities of "calls that originate on the network facilities of the other carrier" on the basis of a "reasonable approximation of the additional costs of terminating such calls.").

<sup>9</sup> See Local Competition Order, 11 FCC Rcd at 16008, 16012-015 (imposing a reciprocal compensation obligation for terminating access for local traffic on all telecommunications carriers).

<sup>10/</sup> Id., 11 FCC Rcd at 16013, codified at 47 C.F.R. § 51.701(a), (b).

<sup>11/</sup> Id., 11 FCC Rcd at 16013.

<sup>12/</sup> Id.

obligation.<sup>13/</sup> As a threshold matter, ISPs such as AOL are end users, not telecommunications carriers.<sup>14/</sup> In the Local Competition Order, a call placed to an end user over the public switched network is considered to be “terminated” when it is delivered to the called telephone number.<sup>15/</sup> Thus, a call to an ISP end user is “terminated” at the point it is delivered to the telephone exchange line (or lines) leased by the ISP and feeding into the local ISP modem pool. Thus, pursuant to Section 251(b)(5) of the 1996 Act and the Commission’s Local Competition Order, all telecommunications carriers, including ILECs, are obligated to compensate each other, through reciprocal compensation arrangements, for the transport and termination of ISP traffic.<sup>16/</sup>

In the context of reciprocal compensation, the Local Competition Order is fully consistent with the Commission’s long-standing precedent that local calls to ISPs should be recognized as

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<sup>13/</sup> See id., 11 FCC Rcd at 16012-013. The Commission defines “transport” as the transmission of terminating traffic that is subject to section 251(b)(5) “from the interconnection point between two carriers to the terminating carrier’s end office switch that directly serves the called party (or equivalent facility provided by a non-incumbent carrier).” Id., 11 FCC Rcd at 16015. The FCC defines “termination” as the switching of traffic that is subject to section 251(b)(5) “at the terminating carrier’s end office switch (or equivalent facility) and the delivery of that traffic from that switch to the called party’s premises.” Id.

<sup>14/</sup> See In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, FCC 97-158, at ¶¶ 344-48 (rel. May 16, 1997) (“Access Charge Reform Order”).

<sup>15/</sup> Local Competition Order, 11 FCC Rcd at 16015.

<sup>16/</sup> Of course, carriers may negotiate to enter into bill-and-keep arrangements in which neither of the two interconnecting networks charges the other for terminating traffic that originates on the other network. See Local Competition Order, 11 FCC Rcd at 16008, 16054-58. Significantly, the ILECs themselves fought vigorously to ensure that reciprocal compensation, rather than bill and keep, apply. See id., 11 FCC Rcd at 16047-48, 16056-057.

local traffic by ILECs.<sup>17/</sup> The recent Access Charge Reform Order reaffirmed these policies that ISP traffic should not be treated as interexchange exchange access traffic and that ISPs should be considered end-users for purposes of the access charge regime.<sup>18/</sup> Specifically, the Access Charge Reform Order provides that:

ISPs may purchase services from incumbent LECs under the same intrastate tariffs available to end users. ISPs may pay business line rates and the appropriate subscriber line charge, even for calls that appear to traverse state boundaries . . . We conclude that 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 Internet service providers.<sup>19/</sup>

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<sup>17/</sup> In originally devising its access charge plan in 1983, the Commission recognized that it should not apply carrier access charges to enhanced services providers ("ESPs"), of which ISPs are a subset. See In the Matter of MTS and WATS Market Structure, 97 FCC 2d 682, 711-22 (1983). In 1987, the Commission expressly held that ESPs must be treated as end users, not telecommunications carriers, for the purposes of applying access charges. See Northwestern Bell Telephone Company Petition for a Declaratory Ruling, 2 FCC Rcd 5986, 5988 (1987); see also In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd 2631, 2635, n.8 (1988). In 1988, the Commission affirmed the rights of ISPs to employ local exchange services, under local intrastate tariffs, to connect to the public switched network. See id., 3 FCC Rcd at 2635, n.8 (1988) (finding that ISPs may pay local business line rates and the appropriate subscriber line charge, rather than interstate access rates, even for calls that appear to traverse state boundaries). Thereafter, the Commission has consistently concluded that application of interexchange access charges to ESPs is inappropriate, and that ISP traffic should be recognized as local traffic by LECs. See, e.g., In the Matter of Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd 4524, 4535 (1990).

<sup>18/</sup> See Access Charge Reform Order at ¶¶ 344-48.

<sup>19/</sup> See id. at ¶¶ 342, 344.

Indeed, the Access Charge Reform Order specifically notes that ISPs exhibit many of the same characteristics of other classes of local business customers,<sup>20/</sup> and explicitly characterizes the connection from the end user to the ISP as local traffic.<sup>21/</sup>

Notably, the ILECs themselves have characterized ISP-bound traffic originated and terminated within the same exchange service area as local. For example, in obtaining Commission approval to provide "Internet Access Services," Bell Atlantic asserted that calls to ISPs over the public switched network are fundamentally local in nature.<sup>22/</sup> Curiously, while Bell Atlantic characterizes such calls as local for purposes of ascertaining whether its Internet access offering satisfies the requirements of Section 271, it takes the opposite position in the context of construing its reciprocal compensation obligations under Section 251.

Requiring LECs to compensate other carriers for the transport and termination of local ISP traffic is also consistent with the pro-competitive nature of both the Access Charge Reform Order and the Local Competition Order, which adopt regulatory structures that replicate the

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<sup>20/</sup> See id. at ¶¶ 344-346.

<sup>21/</sup> See id. at ¶ 342, n.502 ("to maximize the number of subscribers that can reach them through a *local call*, most ISPs have deployed points of presence.") (emphasis supplied); cf. In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order (rel. May 8, 1997) at ¶ 789 ("When a subscriber obtains a connection to an Internet service provider via voice grade access to the public switched network, that connection is a telecommunications service and is distinguishable from the Internet service provider's service offering.").

<sup>22/</sup> See In the Matter of Bell Atlantic Telephone Companies, Offer of Comparably Efficient Interconnection to Providers of Internet Access Services, CCB Pol. 96-09, Bell Atlantic Reply Comments at 4-5 (filed Apr. 29, 1996); see also Amendment to Bell Atlantic CEI Plan to Expand Service Following Merger With NYNEX, CCB Pol. 96-09 at 4 (filed May 5, 1997) ("In providing this [Internet Access Service] Bell Atlantic and its vendor will subscribe only to generally-available local telecommunications services.").

conditions of a competitive marketplace and the prices that would prevail therein.<sup>23/</sup> To this end, the Commission has acknowledged that cost and pricing rules must reflect cost causation.<sup>24/</sup>

In fact, any failure to require the reciprocal compensation framework for ISP traffic would be a step backwards to inefficient pricing because CLECs would not be compensated for the costs of transporting and terminating ISP traffic. The fact that ISPs may originate few calls is completely irrelevant to the obligation to compensate CLECs' termination costs.<sup>25/</sup> Furthermore, while several ILECs have asserted that reciprocal compensation for ISP traffic should be eliminated because it forces them to bear uncompensated costs,<sup>26/</sup> they have yet to demonstrate that ISP

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<sup>23/</sup> See, e.g., Local Competition Order, 11 FCC Rcd at 15505-09, 15844, 15846-47; Access Charge Reform Order at ¶¶ 13, 35; In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, Notice of Proposed Rulemaking and Third Report and Order, FCC No. 96-488 at ¶¶ 14, 49, 55-56 (rel. Dec. 24, 1996) (because previous access charge rules compelled ILECs "to impose charges for access services in a manner that does not accurately reflect the way those LECs incur the costs of providing those services," the "rate structure rules do not send accurate pricing signals to customers, and consequently, encourage inefficient use of telecommunications services . . . . These inaccurate pricing signals . . . could very well skew or limit the development of competition in the markets for telecommunications services."). See also 47 U.S.C. § 252(d) (mandating cost-based rates for interconnection, unbundled elements, and transport and termination); 47 U.S.C. § 254(k) (barring cross-subsidization of services and requiring reasonable allocation of joint and common costs).

<sup>24/</sup> See id.; see also Local Competition Order at 15813-14; Access Charge Reform Order at ¶¶ 35-36.

<sup>25/</sup> Cf. ALTS Petition, Attachment 1 (June 9, 1997 Letter from Ms. Sharon McGee, General Manager - Competitive Provider Account Team, Southwestern Bell, to Mr. Edward Cadieux, Director, Regulatory Affairs - Central Region, Brooks Fiber Properties).

<sup>26/</sup> See, e.g., Pacific Telesis NOI Comments at 21-22; Bell Atlantic/NYNEX NOI Comments at 13-15; see also Southern New England Telephone NOI Comments at 9-11.

traffic actually imposes uncompensated costs on the public switched network.<sup>27/</sup> The Commission recently rejected allegations about network congestion, finding that ILECs' claims of "uncompensated use" did not warrant the imposition of interstate access charges on ISPs.<sup>28</sup> Accordingly, the Commission should reject any ILEC proposal to eliminate reciprocal compensation for ISP traffic on similar grounds.

## **II. ANY FAILURE BY LECS TO COMPENSATE OTHER CARRIERS FOR THE TRANSPORT AND TERMINATION OF ISP TRAFFIC IS UNLAWFULLY DISCRIMINATORY**

Section 202(a) of the Act precludes "unjust or unreasonable discrimination" in the charges, practices or services of a regulated common carrier.<sup>29/</sup> Section 202 further prohibits a common carrier from exercising any "undue or unreasonable prejudice or disadvantage" against any person or class of persons, including end users.<sup>30/</sup> The duty not to discriminate has been interpreted to require all local exchange carriers to make their services available to "similarly situated" end users on a full and fair basis.<sup>31/</sup> Thus, at a minimum, as business users of LEC facilities, ISPs, must be treated in a nondiscriminatory fashion relative to other similarly situated large business end users.

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<sup>27/</sup> Access Charge Reform Order at ¶ 346.

<sup>28/</sup> Id. at ¶ 347.

<sup>29/</sup> 47 U.S.C. § 202(a).

<sup>30/</sup> Id.

<sup>31/</sup> See, e.g., In the Matter of AT&T Communications Revision to Tariff FCC No. 12, Memorandum Opinion & Order on Remand, 6 FCC Rcd 7039, 7050-52 (1991); Competitive Telecommunications Ass'n v. FCC, 998 F.2d 1058, 1061 (D.C. Cir. 1993).

Failure to ensure that ILECs compensate CLECs for the transport and termination of ISP local traffic violates the prohibition in Section 202(a) of the Act against unjust and unreasonable discrimination. Specifically, ILECs who refuse to compensate CLECs for the transport and termination of ISP traffic unlawfully discriminate between ISPs and all other end users purchasing "like" local service.<sup>32/</sup> While AOL may be a large end user and consumer of local telecommunications services, neither AOL, nor other ISPs, are unique in their generation of public switched network traffic. Indeed, many other large end users operate in this manner. Notably, concert ticket and other ticketing agencies, credit card validation services, airline reservation services, catalog merchants, banks or other financial institutions, and call-in radio can also induce large amounts of inbound local telephone traffic.<sup>33/</sup> Moreover, ISPs can be connected to the switch of the LEC through the same types of dedicated access facilities that are employed by other large business end users. Since numerous other businesses purchase a "like" service and use the network in a manner comparable to ISPs, the imposition of different pricing standards for ISPs and their traffic would be unjustly and unreasonably discriminatory.<sup>34/</sup> Section 202(a) simply does not permit local exchange carriers to distinguish between different classes of local traffic in this fashion.

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<sup>32/</sup> See, e.g., Competitive Telecommunications Ass'n v. FCC, 998 F.2d at 1061.

<sup>33/</sup> See Economics and Technology, Inc., "The Effect of Internet Use on the Nation's Telephone Network," Jan. 22, 1997 ("ETI Study") at 17-18 (filed as an attachment to the Comments of the Internet Access Coalition in the FCC's Access Charge Reform proceeding, CC Docket No. 96-262 (filed Jan. 29, 1997)).

<sup>34/</sup> See supra nn. 29-32; see also ETI Study at 18.

The ALTS Petition indicates that some ILECs are compounding their discriminatory conduct by treating ISP-bound traffic terminated by CLECs differently from ISP-bound traffic terminated by adjacent ILECs.<sup>35/</sup> According to the ALTS Petition, these ILECs are refusing to compensate CLECs for the transport of ISP local traffic while compensating adjacent ILECs for the transport of local ISP traffic.<sup>36/</sup> If this is true, the ILECs are unjustly and unreasonably discriminating between two types of transparently similar traffic originating on their networks: ISP-bound traffic terminated by ILECs versus ISP-bound traffic terminated by CLECs.

As noted, nothing in either the 1996 Act or the Local Competition Order allows ILECs to treat ISP-bound traffic differently for reciprocal compensation purposes depending upon the identity of the carrier terminating such traffic.<sup>37/</sup> As ALTS points out, sanctioning such a practice harms ISPs purchasing local service from CLECs, since competitive conditions undoubtedly would require that the increased costs associated with the ILECs failure to pay reciprocal compensation would have to be passed onto the ISP end user.<sup>38/</sup> Accordingly, the Commission should affirm that Section 202(a) requires ILECs to compensate CLECs for the transport and termination of ISP-bound traffic.

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<sup>35/</sup> See ALTS Petition at 7-8.

<sup>36/</sup> See id.

<sup>37/</sup> The Local Competition Order states that the 1996 Act's reciprocal compensation "obligations apply to all LECs in the same state-defined local exchange service areas, including neighboring incumbent LECs. . . ." Local Competition Order, 11 FCC Rcd. at 16014-15.

<sup>38/</sup> ALTS Petition at 7 & n.10.

### III. ILEC REFUSAL TO COMPENSATE CLECs FOR THE TRANSPORT AND TERMINATION OF ISP TRAFFIC WILL UNDERMINE THE PROVISION OF ADVANCED SERVICES AS CONTEMPLATED BY THE 1996 ACT

In passing the 1996 Act, Congress sought to establish a "pro-competitive, deregulatory national policy framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."<sup>39/</sup> Accordingly, Sections 251 and Section 252 provide competitors opportunities to offer services to ISP end-users, such as AOL and others, by deploying their own facilities (such as new data-friendly networks), leasing unbundled network elements, or reselling telecommunication services.<sup>40/</sup> The Commission's local competition rules and policies are now just beginning to provide ISPs with competitive local service alternatives.<sup>41/</sup> The Commission should continue its efforts to encourage new competitive entry into local telephony so that competition, not regulation, can provide genuine incentives for the deployment of the ubiquitous, efficient, economic and reliable, data-capable networks necessary for the future.

As a result of the 1996 Act and the Commission's pro-competitive regulations and policies, AOL is beginning to see some offerings by CLECs that help facilitate the efficient, reliable and affordable delivery of data traffic. For example, AOL utilizes the services of numerous CLECs for the carriage of its ISP local traffic. Moreover, competitive providers have

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<sup>39/</sup> H.R. Conf. Rep. No. 104-458 at 1 (1996).

<sup>40/</sup> See 47 U.S.C. §§ 251, 252.

<sup>41/</sup> See, e.g., 47 C.F.R. § 51.1 et seq. ("Interconnection").

announced high-speed xDSL or other service offerings in direct competition with the services offered or planned by many ILECs.<sup>42/</sup> These offerings for ISP traffic provide opportunities for AOL and others to obtain rates, terms and conditions from CLECs that are more advantageous than those previously available from monopoly local exchange providers in some markets.

The ILEC attack on the reciprocal compensation framework for ISP traffic is designed to raise the costs to CLECs of offering services to ISPs and to stem the migration of ISP traffic off the ILECs networks. Certainly, if CLECs are denied compensation for ISP-bound traffic terminated on their networks, they will be discouraged from marketing and providing their services to these end users. The result would be to hamper the competitive choice in local telecommunications mandated by the 1996 Act and ultimately to undermine the robust Internet online services market.

Critically, virtually all large ILECs, including every Bell Operating Company ("BOC"), have launched or announced plans to offer Internet access service as a local service.<sup>43/</sup> By thwarting the emergence of competing local networks, the ILECs can exploit ISP reliance on

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<sup>42/</sup> See, e.g., E. Krapf, "Finding the right DSL for business," Business Communications Review at 68 (March 1997) ("MFS/WorldCom plans to make xDSL a key part of its assault on the incumbent LECs"); see also "WorldCom Demonstrates New High-Speed Internet Access Service at FCC Bandwidth Forum," press release, January 23, 1997, <[www.wcom.com/press/012397.html](http://www.wcom.com/press/012397.html)>.

<sup>43/</sup> See, e.g., Bell Atlantic Offer of CEI to Providers of Internet Access Services, DA 96-81, Order (rel. June 6, 1996) (approving Bell Atlantic CEI plan for Internet Access service); "Telephone Companies Target ISP Market," Inter@ctive Week, March 10, 1997 ("[A]ll but one of the country's largest telephone companies have launched an Internet service provider subsidiary. The one exception - NYNEX Corp. - says it will set up shop during the second quarter."). See also Amendment to Bell Atlantic CEI Plan To Expand Internet Service Following Merger With NYNEX, CCB Pol. 96-09 (filed May 5, 1997).

their bottleneck local facilities to hinder competition in the Internet online services market through unfair and improper marketing practices, discriminatory interconnection arrangements, and/or impermissible cross-subsidization.<sup>44/</sup> If the past is any indication, the possibility of such conduct is not far-fetched.<sup>45/</sup>

Most importantly, any Commission failure to require ILECs to compensate CLECs for the transport and termination of local ISP traffic will undermine the provision of advanced services and Internet access as contemplated by the 1996 Act.<sup>46/</sup> As AOL has repeatedly stated, the architecture of the public switched telephone network is ill-suited for ISP traffic. In contrast, not only are new entrants more likely to utilize more data-friendly network architectures and capabilities, they exert pressure on the ILECs to do so.<sup>47/</sup> Rather than upgrade their facilities or offer better terms and rates than some CLECs may now provide, however, the numerous ILECs now appear intent to "win" back ISP traffic by refusing to pay CLECs for terminating ISP calls. ISPs will thus be required to bear the higher cost and sometimes less efficient carriage for their traffic. Ultimately, it is Internet online services users who will suffer.

### CONCLUSION

For the reasons stated herein, the Commission should affirm ALTS request that the federal reciprocal compensation rules apply to all local traffic, including ISP traffic, and to all

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<sup>44/</sup> AOL NOI Comments at 37-42.

<sup>45/</sup> See AOL NOI Comments at 41-43.

<sup>46/</sup> See, e.g., 47 U.S.C. Section 230(b) (added by 1996 Act Section 509)(establishing policy against regulation of Internet on-line services).

<sup>47/</sup> AOL Comments at 27-33; AOL NOI Reply Comments at 9-10.

local exchange providers, including CLECs. Any Commission failure to ensure that ILECs compensate CLECs for the transport and termination of ISP local traffic is contrary to the 1996 Act, the Commission's Local Competition Order, would treat ISP end users and CLECs in a discriminatory manner, and would deprive ISPs of the competitive opportunities in the telecommunications marketplace that the 1996 Act and the Commission's regulations were designed to foster.

Respectfully Submitted,

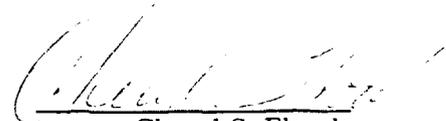
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