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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	**CCB/CPD 97-30**
ALTS Request for Clarification Concerning Reciprocal Compensation Obligation	)	

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COMMENTS OF COMPUSERVE INCORPORATED

CompuServe Incorporated, by its attorneys and in response to the Commission's Public Notice, DA 97-1399, released July 2, 1997, hereby submits these comments in the above-referenced proceeding. The Commission has solicited comments on the letter submitted by the Association for Local Telecommunications Services ("ALTS") requesting that the Commission clarify "that nothing in the Local Competition Order requires this traffic [calls to an Information Service Provider ("ISP")] to be handled differently than other local traffic is handled under current reciprocal compensation agreements in situations where local calls to ISPs are exchanged between ILECs an CLECS."[1] CompuServe supports grant of the ALTS request for clarification.

I. BACKGROUND

CompuServe is one of the leading independent providers of both consumer and business online information services. CompuServe and its licensees and affiliates around the world serve over five million consumer subscribers with a wide range of Internet access and proprietary online database and messaging services and over 1200 corporate customers with

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[1] ALTS Letter Request, June 20, 1997, at 1.

productivity-enhancing data services, including point-of-sale financial transactions processing capabilities, wide area intranet interconnectivity, and applications hosting and systems management.

As the Commission is aware from CompuServe's previous comments and submissions, including those recently submitted in both phases the Commission's Access Charge Reform proceeding,[2] at present CompuServe remains almost entirely dependent upon the incumbent local exchange carriers ("ILECs") for delivery of data calls from its subscribers to CompuServe's local nodes, from which point these calls are generally handed off to CompuServe's interexchange carriers for transport to CompuServe's host computers. Indeed, in its January 1997 Comments, CompuServe reported that it was using approximately 85,000 local lines obtained from the ILECs in order for its subscribers to reach it.[3] CompuServe also pointed out that the ILECs have an incentive to keep access rates artificially high for independent ISPs now that they are competitors.[4] Thus, in the Notice of Inquiry phase of Access Charge Reform proceeding concerning information service providers, CompuServe urged that "one of the most important things the Commission can do that will lead to the provision of the communications capabilities that ESPs desire is to continue along the course of taking actions to develop

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[2] Access Charge Reform and Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket Nos. 96-262 and 263; CompuServe and Prodigy Comments, January 29, 1997, at 15; CompuServe and Prodigy Comments, March 24, 1997, at 8.

[3] CompuServe and Prodigy Comments, January 29, 1997, at 10.

[4] Id., at 16.

meaningful competition in the local marketplace."[5] CompuServe encouraged the Commission to take action "to facilitate entry by new competitors who are likely to be responsive to consumer demands from all types of users, including ESPs."[6] Of course, among the principal types of "new competitors" that CompuServe had in mind are the CLECs, the companies represented by ALTS.

As discussed below, CompuServe believes that grant of the ALTS request for clarification would be consistent with the intent of the Local Competition Order,[7] and, importantly, from a public interest perspective, it would further the development of competition that ultimately should benefit ISPs and other users.

II. DISCUSSION

ALTS' request for clarification was prompted by threats from at least some of the ILECs to discontinue payment of reciprocal compensation for ISP calls[8] exchanged between ILECs and CLECs. These ILECs apparently take the position that the calls to ISPs are

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[5] CompuServe and Prodigy Comments, March 24, 1997, at 8.

[6] Id., at 9.

[7] Implementation of the Local Competition Provisions in the Telecommunication Act of 1996, CC Docket No. 96-98, FCC 96-325, released August 8, 1996 (hereinafter "Local Competition Order").

[8] The Public Notice asks for comment on ALTS' request with regard "to information service providers, and, more specifically, with regard to enhanced service providers (ESPs)." p.2. While CompuServe agrees that the term "information services" may be broader than "enhanced services," for purposes of the issue raised by the ALTS petition, CompuServe does not see any reason for differential treatment. See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, CC Docket No. 96-149, FCC 96-489, at para. 102.

jurisdictionally interstate and, therefore, do not constitute "local telecommunications traffic" to which the reciprocal compensation obligation applies.[2]

Regardless of the jurisdictional nature of the ISP calls exchanged between CLECs and ILECs -- and CompuServe believes that under well-established precedent the great preponderance of this information services traffic is jurisdictionally interstate as a matter of law -- CompuServe supports ALTS' position because, as ALTS points out, the real issue is not the jurisdictional nature of the ISP traffic, but rather how the Commission intended in the Local Competition Order for the traffic to be handled for compensation purposes. ISPs are treated as "end users" rather than interexchange carriers ("IXCs") for purposes of the federal access charge regime, and, therefore, do not pay the contributory, non-cost-based carrier access charges that IXCs pay. This does not mean that ISP calls were not intended by the Commission to be treated as "local" calls for compensation purposes.

Indeed, while it appears that the Commission did not focus on this specific issue in the Local Competition proceeding, such treatment as "local" for compensation purposes would seem to be consistent with the Commission's intent. This is because the Commission appears to have intended only to exclude from the compensation regime those calls subject to the current carrier access charge regime. Paragraphs 1033 and 1034 of the Commission's order explains the basis for differentiating between calls currently subject to the payment of carrier access charges and those which are not, and the Commission's treatment of traffic exchanged between LECs

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[2] Section 51.701(a) makes the compensation obligation applicable to "local telecommunications traffic" and Section 51.701(b) defines local telecommunications traffic as traffic between an ILEC and another carrier "that originates and terminates within a local service area established by the state commission. . . ." 47 C.F.R. §§ 51.701(a) and (b).

and Commercial Mobile Radio Service ("CMRS") providers shows that the Commission's principal purpose in delineating the parameters of the compensation obligation was to avoid disruption of existing access charge revenue flows. Thus, the Commission stated:

> Based on our authority under section 251(g) to preserve the current interstate access charge regime, we conclude that the new transport and termination rules should be applied to LECs and CMRS providers so that CMRS providers continue not to pay interstate access charges for traffic that currently is not subject to such charges, and are assessed such charges for traffic that is currently subject to interstate access charges.[10]

Given the purpose "to preserve existing access revenue flows,"[11] because ISP calls presently are not subject to the contributory carrier access charge regime, there is no basis to assume the Commission intended to treat ISP calls as other than "local" for compensation purposes.

The Commission has initiated an inquiry, of course, to examine various issues associated with the usage of the public switched network by information and Internet access providers,[12] and it is possible that, as a result of the findings made in the NOI and whatever follow-on proceedings take place, that the access charge treatment for ISPs may be changed in some way. Indeed, one of the arguments made by some of the ILECs in their NOI comments is that the current access charge treatment of ESPs should be changed because they presently are required to pay reciprocal compensation to CLECs for terminating ISP calls in light of the fact

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[10] Local Competition Order, at para. 1043.

[11] ALTS Letter Request, at 5.

[12] Notice of Inquiry on Implications of Information Service and Internet Usage, CC Docket No. 96-263, FCC 96-488, released December 24, 1996.

that ESPs are classified as "end users" under the current access charge regime.[13] Undoubtedly, this is an issue that will be explored in the NOI, and it is certainly within the bounds of the inquiry for the ILECs to argue there for changes in ESP access charge treatment. But, at least pending the outcome of the inquiry and any change in ESP access charge treatment, the Commission should grant ALTS' requested clarification that ISP calls are eligible for compensation.

It would not serve the public interest for the Commission to take action at this time which would deter or inhibit the viability of the CLECs as competitors in the local marketplace. From CompuServe's perspective as an information services provider that presently is almost entirely dependent on the ILECs for local loops, and from the larger public interest perspective of all users of local exchange services,[14] it is preferable for the Commission to adopt a policy which is consistent with encouraging the viability of CLECs as new local service competitors for ISP traffic.

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[13] See e.g., Pacific Telesis Group Comments, March 24, 1997, at 22-23; Southwestern Bell Reply Comments, April 23, 1997, at 5; SNET Comments, March 24, 1997, at 10.

[14] As recently as December 1996, the Commission stated that "BOCs currently are the dominant providers of local exchange and exchange access services in their in-region states, accounting for approximately 99.1 percent of the local service revenues in those markets." Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, CC Docket No. 96-149, FCC 96-149, December 24, 1996, at para. 10.

III. CONCLUSION

For the foregoing reasons, CompuServe supports ALTS' request for clarification to the effect that, at present, calls to ISPs exchanged between ILECs and CLECs are subject to the reciprocal compensation obligation.

Respectfully submitted,

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July 17, 1997

CERTIFICATE OF SERVICE

I, Teresa Ann Pumphrey, hereby certify that a copy of the foregoing **Comments of CompuServe Incorporated,** was served by first-class mail, postage prepaid and by hand were indicated, this 17th day of July, 1997, on the following persons:

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