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EX PARTE OR LATE FILED

August 19, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Memorandum of Ex Parte Communication

Megalie Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Ms. Salas:

Re: *CC Docket No. 96-98 - Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Regarding Reciprocal Compensation for Information Service Provider Traffic*

In a Public Notice (DA 98-1641) dated August 17, 1998, the Commission directed that *ex partes* regarding reciprocal compensation for Internet traffic should be submitted in CC Docket No. 96-98. Because the attached materials were submitted as an *ex parte* in CCB/CPD 97-30 on Friday, August 14, 1998, this material is being resubmitted as an *ex parte* in CC Docket No. 96-98. We are submitting the original and one copy of this Memorandum to the Secretary in accordance with Section 1.1206(b)(2) of the Commission's rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me at (202) 326-8889 should you have any questions.

Sincerely,

Attachment

cc: Edward Krachmer

No. of Copies rec'd
List A B C D E

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August 14, 1998

The Honorable William E. Kennard
Chairman, Federal Communications Commission
1919 M Street, NW, Room 814
Washington, D.C. 20554

Re: Jurisdictional Nature of Calls to Internet Service Providers: CCB/CPD 97-30

Dear Chairman Kennard:

In a July 23, 1998 *ex parte* submission, WorldCom, Inc. ("WorldCom"), urged the Commission to neither assert its jurisdiction over Internet traffic nor to clarify that such traffic is not subject to reciprocal compensation agreements for local traffic.¹ The Commission should not take WorldCom's advice. Instead, now is the time for the Commission to descend from its perch on the fence and resolve this long-running debate by asserting its jurisdiction over Internet traffic. The attached materials demonstrate such action would:

- not cause material financial harm to CLECs, including those terminating Internet traffic to ISPs,
- be consistent with many state decisions that acknowledge Commission action may necessitate a revisiting of their determinations, and
- be consistent with long precedent.

NO MATERIAL HARM TO CLECS

The financial community has been observing and analyzing this regulatory anomaly. The report "What Reciprocal Compensation Means to the CLECs" by James Henry of Bear Stearns is included as Attachment I. The report finds that:

- "... the exposure of the CLEC group as a whole is minimal" and
- "It seems that nearly 80% of the reciprocal compensation payments are going to other large carriers like MCI and WorldCom. As such, for the majority of the CLECs, we believe that investors should not lose any sleep over this issue."

¹ Letter from Catherine R. Sloan, Vice President, Federal Affairs, WorldCom, Inc., to the Honorable William E. Kennard, Chairman, FCC, dated July 21, 1998 ("WorldCom Letter").

Reports such as this one and Scott Cleland's "Reciprocal Comp For Internet Traffic – Gravy Train Running Out Of Track" (Attachment II) indicate that the financial marketplace has already factored in anticipated changes to existing reciprocal compensation claims for Internet traffic into their evaluations of CLEC investments.

IMPACT ON STATE ORDERS

State commissions have been forced to effect interim practices in the absence of a definitive conclusion by this Commission. As demonstrated by the Attachment III, many states which have addressed this issue have recognized that this matter is before the Commission and indicated that their decisions may require revisiting once the FCC issues a ruling. In essence, such states have essentially deferred to this Commission's authority in this matter. Consequently, the actions of the states should not be construed to indicate definitively that Internet traffic is local, as argued by WorldCom and others.

PRECEDENT

Consistently, throughout the past one and one-half decades, this Commission has held that Internet traffic is interstate which, except for the Enhance Service Provider ("ESP") exemption, would be subject to interstate access charges.² As part of the ESP exemption, the FCC concluded that local service charges would apply to such traffic. However, in no way did the FCC find that Internet traffic is local and therefore under the jurisdiction of the various State commissions and ripe for reciprocal compensation under Rule 51.701. *Indeed, if Internet traffic is, or ever was, local telecommunications service an exemption from interstate access charge would be unnecessary.*

The actions of the LECs since the inception of the ESP exemption cannot now be used by WorldCom and others to demonstrate that Internet traffic is local telecommunications service. The LECs billed local access charges in compliance with the mandate of the Commission, not as an admission of jurisdictionality. In fact, LECs have continually sought to reverse the ESP exemption in order to correctly bill Internet service providers ("ISPs") for their interstate access services. Moreover, the negotiations between LECs and CLECs, as alluded to in the WorldCom letter, were conducted in an environment in which the LECs presumed that this Commission would preserve its long-held position that Internet traffic is indeed subject to Federal jurisdiction.

IN CONCLUSION

In order to bring this matter to a rational resolution, the Commission must act expediently to rule in CCB/CPD 97-30³ with a definitive conclusion regarding the inapplicability of

² For a detailed chronology, see SBC's May 8, 1998 ex parte filing at Tab 1.

³ It should be noted that WorldCom has incorrectly indicated that "no pending proceeding on this issue" exists. Although ALTS has filed to withdraw its request for clarification, the proceeding continues to exist, even to the extent that WorldCom filed the instant ex parte within that proceeding. Further, the

reciprocal compensation payments for Internet traffic. Absent any action by this Commission or in the event this Commission would find that Internet traffic is local in nature, the industry would realize a significant shift in the demand for interstate access services. It can reasonably be expected that consumers would shift their demand for interstate services to the intrastate jurisdiction relying on the void created by this Commission's inaction or incorrect action. To finally conclude the ongoing debates that serve only to slow development of competition, the Commission should include in its Order the following language: "Because Internet traffic is subject to Interstate jurisdiction, imposition of payments for local reciprocal compensation for such traffic without the express and unambiguous agreement of the parties to such a provision or interpretation is inconsistent with the Telecommunications Act of 1996."

The marketplace needs this Commission's clear declaration that Internet traffic should not be subject to local reciprocal compensation, and it needs it now.

Sincerely,

Dale Robertson (DR)

Attachments

cc: Commissioner Furchtgott-Roth
Commissioner Ness
Commissioner Powell
Commissioner Tristani
Kathryn Brown, CCB Chief
Jim Schlichting, CCB Deputy Chief

Commission has indicated this matter is currently under its consideration and remains unresolved. (See June 29, 1998 Memorandum of the Federal Communications Commission as Amicus Curiae in Case No. MO-98-CA-43, U.S. Dist. Ct., W.D., Texas)

What Reciprocal Compensation Means To The CLECs

What Is Reciprocal Compensation? Under the Telecommunications Act of 1996 and the FCC's Interconnection Order, it was established that local carriers (CLECs and ILECs) need to have a mechanism in place in order to compensate each other for the exchange of local traffic. Reciprocal Compensation, one of these mechanisms, dictates that a carrier will pay another carrier approximately 0.7 cents per minute for terminating a call on its network. As such, if a customer of Bell Atlantic places a local call to a customer of Teleport, Bell Atlantic will have to pay 0.7 cents per minute to Teleport. The same is true in reverse if a customer of Teleport calls a customer of Bell Atlantic.

Sounds Logical, So What's The Issue? Reciprocal Compensation is a very equitable arrangement in many cases since the average local customer has about as much incoming traffic as outgoing traffic. However, CLECs have very intelligently targeted high-volume customers like Internet Service Providers (ISPs) that have lots of inbound traffic from the ILECs. If I dial into America OnLine's (AOL's) local access number from my home in New York over my Bell Atlantic phone line, Bell Atlantic will carry that call from my home to its central switching office (CO) and then hand off that call to whichever carrier (typically a CLEC) is providing AOL with that local line. As such, Bell Atlantic will be paying out roughly 0.7 cents per minute for the duration of that call. These payments can get large with ISP customers that stay on line for hours instead of minutes, so the ILECs are crying bloody murder about this issue.

What Has Happened Thus Far? Despite the fact that ILECs have contractual obligations to pay the CLECs for reciprocal compensation on calls to ISPs, they have largely refused to make payments and are disputing this issue to the highest possible authority. This process has

not gone particularly well for the ILECs since they have lost 21 out of 21 state rulings and court cases which ruled on the issue in favor of the CLECs. In these cases, the courts largely ruled with respect to the ILEC's contractual obligation under the negotiated interconnection deals and typically did not make judgements as to whether calls to ISPs were local or long distance calls and therefore whether they were subject to reciprocal compensation payments. Consequently, the ILECs are now seeking a "clarification" from the FCC as to whether calls to ISPs are local or long distance. If the FCC says that they are long distance calls then the ILECs will claim in court that only local calls are subject to reciprocal compensation.

What Is Likely To Happen? Consensus beliefs are that ISP-related reciprocal compensation is likely to be greatly diminished in profitability or disappear entirely by year 2000 time frame when the initial round of interconnection agreements comes up for renegotiation. The question is whether something happens before that as a result of the recent CLEC and ILEC initiatives. Based on feedback from a broad variety of industry sources, we would not be surprised if the FCC opted to make some decision or clarification on this issue at some point after Labor Day. While we would not venture to guess exactly when a decision will be made and what the specific outcome will be, we do believe that investors need to be aware of each CLEC's exposure to the reciprocal compensation issue so that they can make informed investment decisions when the time comes. While some are inclined to say that any decision will be a one-sided victory for either the ILECs or the CLECs, investors should recall that the FCC has typically been very evenhanded in its rulings in the past. As such, we would expect any action on reciprocal compensation to include a transition mechanism that would ease the impact of any reduction of payments.

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What Are The Implications For The CLECs. By and large, our research reveals that the CLECs have relatively minimal exposure to reciprocal compensation. We were pleasantly surprised by this discovery given the statements by the ILECs that they expect to pay out \$600 million in reciprocal compensation in revenue in 1998 and up to \$1.5 billion in 1999. With exception of US LEC, which generated 60% of its 2Q98 revenue from ISP-related reciprocal compensation revenue, only one of the CLECs had more than 15% of 2Q98 revenue related to reciprocal compensation. In fact eight had less than 10% of revenue from this segment and another eight had no exposure at all. It seems that nearly 80% of the reciprocal compensation payments are going to other larger carriers like MCI and WorldCom. As such, for the majority of the CLECs, we believe that investors should not lose any sleep over this issue.

What About The Impact On CLEC EBITDA? Even though the percentage of revenue is minimal for most of the CLECs, the percentage of EBITDA is clearly more significant given the 80%-plus margin that reciprocal compensation revenue carries. That said, we still believe that this issue should not be a significant concern given the high growth rates that the CLECs are posting and the powerful operating leverage that they are demonstrating in their core businesses. ICG Communications posted a sequential EBITDA improvement of \$7.2 million in 2Q98 as its gross margins expanded by 590 basis points. This feat was accomplished in spite of the fact that its reciprocal compensation revenue declined to \$6.6 million from \$8.5 million in 1Q98. Moreover, we believe that CLEC EBITDA estimates for 1999E are conservative enough to create a cushion if reciprocal compensation dries up sooner than expected.

Net-Net. Our intent in this piece is to alert investors to an issue that we expect will come to a head during the next quarter. While only time will tell how this issue will be resolved, we wanted to put forth data that will enable investors to make objective decisions about which companies have relevant exposure to reciprocal compensation and which companies do not. **Our conclusion is that the exposure of the CLEC group as a whole is minimal.** The following table lists each of the stocks in our CLEC universe along with details about their exposure to reciprocal compensation.

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Table 1. CLEC Exposure To Reciprocal Compensation

Company Name	2Q98 Reciprocal Comp. Revenue	% Of Total 2Q98 Revenue	Comments On Company Exposure To Reciprocal Compensation
Advanced Radio Telecom Corp. (ARTT-\$4 13/16)	\$0.0	0.0%	As an early stage company with only \$0.2 million in 2Q98 revenue and no switched services revenue, ARTT has <i>no exposure</i> to the reciprocal compensation issue. Estimates for 1999 do not reflect any revenue from this source.
COLT Telecom Group PLC (COLTY-\$167 1/8)	£0.0	0.0%	As an international CLEC, COLTY has <i>no exposure</i> to the reciprocal compensation issue by virtue of the fact that local lines in most of its markets are billed on a usage sensitive basis so the incumbent PTT collects a per minute rate that offsets the fees that it pays out to COLTY for the termination of local traffic.
Concentric Network Corp. (CNCX-\$20 3/8)	\$0.0	0.0%	As an Internet and data services provider CNCX has <i>no exposure</i> to reciprocal compensation. Although it has filed for CLEC status in a number of states, that was largely to reduce its interconnection and line costs as opposed to taking advantage of reciprocal compensation.
e.spire Communications, Inc. (ESPI-\$18 ½)	\$3.5	9.8%	ESPI has <i>little exposure</i> to the reciprocal compensation issue since it generates less than 10% of its revenue from this source. While this percentage of revenue may seem high relative to some of its peers, bear in mind that ESPI is posting growth rates in its core telecom service business that far exceeds most of its peers. As such, the percentage of 1999E revenue should be significantly less. Moreover, ESPI is not targeted to hit EBITDA breakeven until 2Q99, leaving it plenty of time to refocus on other initiatives in the event that the FCC rules against the CLECs on reciprocal compensation.
GST Telecommunications, Inc. (GSTX-\$12 3/8)	\$0.0	0.0%	GSTX has a healthy business providing PRI lines to Internet Service Providers (ISPs) but has not been reporting any of its reciprocal compensation revenue thus far. As such, it has <i>no exposure</i> to this issue and could actually see upward revisions to estimates if the issue is resolved in favor of the CLECs. 1999 estimates do not reflect any reciprocal compensation revenue.

Hyperion Telecommunications, Inc. (HYPT-\$13 7/8)	\$1.3	17.1%	HYPT has <i>some exposure</i> to the reciprocal compensation issue as it has more than 10% of total revenue related to this line of business. That said, the company's growth rate is so high that we would expect the percentage of 1999E revenue to be well less than 10%. In addition, the company is not expected to hit EBITDA breakeven until some time in 1999, leaving it plenty of time to refocus its business initiatives on other areas.
ICG Communications, Inc. (ICGX-\$25 3/4)	\$6.6	4.8%	ICGX has <i>little exposure</i> to the reciprocal compensation issue as it has less than 10% of total revenue related to this line of business. We believe that our 1999 revenue and EBITDA estimates of \$700 million and \$100 million, respectively, reflect little impact from reciprocal compensation. 1999E EBITDA could be approximately \$85 million if reciprocal compensation disappears all together in 1999. ICGX recently reached an agreement with Pacific Bell in California for the RBOC to pay 0.3 cents per minute for reciprocal compensation but has not yet started collecting cash.
Intermedia Communications Inc. (ICIX-\$35 13/16)	\$8.0	4.2%	ICIX has <i>little exposure</i> to the reciprocal compensation issue as it has less than 10% of total revenue related to this line of business. Moreover, we estimate that only \$6.4 million of the \$190.2 million in total 2Q98 revenue originates from ISPs and is therefore subject to risk. We believe that our 1999 revenue and EBITDA estimates of \$1.1 billion and \$175 million, respectively, reflect little if any impact from reciprocal compensation. We would also point out that 1999 estimates reflect little if any revenue or EBITDA contribution from ICIX's agreements with US West and Ameritech, providing additional cushion in the event that reciprocal compensation goes away.
ITC ^Δ DeltaCom, Inc. (ITCD-\$44 1/4)	\$0.2	0.4%	ITCD has very <i>little exposure</i> to the reciprocal compensation issue as it has well less than 10% of reported revenue related to that line of business. The company has elected to report only the revenue that it actually collects from the ILECs, which is approximately 10% of the revenue owed. The company has elected to pursue ISP traffic aggressively based on a business case justified solely by PRI rates, not on any reciprocal compensation payments. ITCD could see upward revisions to estimates if the issue is resolved in favorably.

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McLeodUSA Incorporated (MCLD-\$34 ¾)	\$0.0	0.0%	MCLD has virtually <i>no exposure</i> to the reciprocal compensation issue since it booked only \$30,000 of reciprocal compensation revenue in 2Q98. This line of business is not included in any material way in our 1999 estimates.
MetroNet Communications Corp. (METNF-\$27 ¾)	C\$0.0	0.0%	METNF has <i>no exposure</i> to the reciprocal compensation issue by virtue of the fact that the regulatory regime in Canada is based on "bill and keep" interconnection for the time being. The majority of the international players have no risk from this issue.
MGC Communications, Inc. (MGCX-\$12)	\$0.0	0.0%	MGCX has <i>no exposure</i> to the reciprocal compensation issue since it made a conscious decision to sit on the sidelines until the FCC and the courts made a final decision on the subject. The company's strong positive EBITDA and EBIT in its initial Las Vegas market after only 6 quarters are great evidence that the growth and profitability of the CLEC model, particularly the switch-based model, is by no means dependent on any reciprocal compensation revenue stream.
NEXTLINK Communications, Inc. (NXLK-\$35 ½)	\$0.3	1.0%	NXLK has virtually <i>no exposure</i> to the reciprocal compensation issue since it has primarily focused on providing local dialtone services to business customers. The company's guidance has been that it has "less than \$1 million" in revenue from that line of business, with likely less than that coming from ISP circuits.
RCN Corp. (RCNC-\$20 15/16)	\$0.1	0.2%	RCNC has virtually <i>no exposure</i> to the reciprocal compensation issue since it has almost no revenue coming from this line of business. The company has stated that ISP reciprocal compensation is not a focus of its business and that it is primarily focused on installing local lines for its retail residential customers.
Teleport Communications Group, Inc. (T-\$57 5/8)	\$4.5	1.5%	TCGI had virtually <i>no exposure</i> to the reciprocal compensation issue since less than 10% of its 2Q98 revenue originated from this source. We were surprised by the relatively small size of the this number, but apparently the company has many "bill and keep" interconnection agreements. An annualized reciprocal compensation figure of \$20 million is far less than a rounding error on the income statement of TCGI's new parent AT&T, so investors should not be concerned about this issue.

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Teligent Corp. (TGNT-\$26 1/8)	\$0.0	0.0%	As an early stage startup, Teligent has no exposure to the reciprocal compensation because it has virtually no revenue at this point in time. The company is expected to launch a full-scale deployment of its broadband wireless services during 2H98, focusing on business customers. We see no risk to its 1999 revenue or EBITDA estimates related to this issue.
US LEC Corp. (CLEC-\$19 5/8)	\$12.2 million	66.7%	CLEC has significant exposure to the reciprocal compensation by virtue of the fact that the majority of its revenue mix comes from this source. In our May 19, 1998 initiation of coverage, we referenced the company's exposure to this revenue stream and the expectation that this reciprocal compensation revenue opportunity would eventually disappear. As such our enthusiasm of the company was and is based on the skill of its management team and its strong prospects for market share gains in its business customer focused initiatives. The company has an annualized revenue run rate of \$24.5 million after only 6 quarters of operations from businesses other than reciprocal compensation. 60% of our 1999 revenue estimate of \$155 million comes from sources other than reciprocal compensation. While we would clearly expect the stock to get hit in the event of a negative FCC ruling on reciprocal compensation, we believe that the company is creating enduring value for its investors within its core business.
WinStar Communications, Inc. (WCII-\$30)	\$0.1	0.5%	WCII has virtually no exposure to reciprocal compensation and said on its 2Q98 conference call that it has no intention of pursuing a business line that it expects to disappear within 24 months.

All Stocks priced August 5, 1998

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LEGG MASON RESEARCH TECHNOLOGY TEAM

Precursor ResearchSM

Scott C. Cleland

June 24, 1998

Reciprocal Comp For Internet Traffic--Gravy Train Running Out Of Track

(Part V of Internet Regulation Preview Series)

Summary: In a classic case of what you see is not necessarily what you get, investors should not expect the current reciprocal compensation arrangement for Internet traffic to continue much past the end of the year. Given that this issue is probably the single greatest opportunity for arbitrage in the whole sector, over 4,000 percent in some instances, TPG cautions investors that this extraordinary arbitrage "gravy train" will run out of track--probably this year. It is simply not sustainable long-term.

Moreover, investors should not be lulled into a false sense of security that 19 consecutive state public utility commissions have ruled (in addition to a recent Federal Court in Texas) that Internet service provider (ISP) traffic passed through a competitive local exchange carrier (CLEC) is classified as a local call. In the coming months, TPG expects the FCC to trump these state decisions by clarifying that Internet traffic is indeed interstate, effectively reasserting its federal jurisdiction over data or Internet transport. (Reciprocal compensation is a regulatory arrangement where local telecom providers pay each other for "the cost" of terminating the calls they originate. In most cases, reciprocal compensation traffic is two-way and thus largely offsetting. However, since Internet/data traffic is one-way, there is little "reciprocal" about this arrangement. It is just a regulatory compensation windfall for CLECs/ISPs.)

A Big Deal for Investors: This reciprocal compensation arbitrage is a significant part of the existing "data growth engine" of many CLEC and ISP business models. Consequently, investors need to be aware that in some instances, short-term projected results may be artificially "juiced up," potentially providing an illusion of faster-than-real long-term growth. The flip side of this problem is that reciprocal compensation is a significant and growing liability, primarily for the Baby Bells. It is growing at such a rapid rate that it could be a significant threat to earnings roughly in 1999, if not fixed by the FCC by then.

Why the FCC Will Fix It: First, reciprocal compensation for one-way Internet traffic is arguably the single greatest arbitrage opportunity and hence market distortion in the telecom sector today. TPG flagged this important issue in our April 6 "Internet Regulation Preview" bulletin as akin to a broken bank ATM machine that only allows withdrawals and

takes no deposits. No other place in the sector can companies reap as much as a 4,000 percent arbitrage for minimal, value-added service. No competitive market, legal or illicit, can generate such gargantuan arbitrage. Only regulatory distortions can generate this size arbitrage over an extended period of time.

Second, this arbitrage opportunity is greatly contributing to an artificial misalignment of the market structure of this newly emerging competitive voice/data niche. Reciprocal compensation is driving many alliances, mergers and acquisitions for purely regulatory and not economic or competitive reasons. Thus, in some instances, an ISP is currently an asset to a CLEC, but could become a serious liability without the arbitrage of reciprocal compensation. Third, it discourages economically sound facilities-based local investment and inhibits the development of an efficient competitive market. It has the perverse effect of turning customers from assets into liabilities. Why would any competitor want to win a customer if that customer would cost them more in reciprocal compensation terminating minutes than they could earn in revenue from that customer?

What to Expect From the FCC: Investors need to appreciate that it is not that hard for the FCC to fix this in the coming months. ALTS, the association representing the CLECs, has an active petition (dated June 20, 1997) requesting that the FCC issue a clarification that the traffic in question is local and not interstate. ALTS argues in its petition that "this clarification is clearly in the Commission's (FCC) exclusive jurisdiction." For FCC legal authority, ALTS cites a 1980 Computer II FCC decision which was subsequently upheld in the DC Court of Appeals in 1982 and again in 1984. Now that the states have ruled the CLECs' way, the association likely regrets having requested this clarification from the FCC.

Why would the FCC believe such Internet calls are not local, but interstate? The FCC has exempted this traffic from interstate access charges for over a decade. Why would an exemption from interstate access charges be needed if the FCC thought it was a local call? Moreover, in the FCC's April 10 report to Congress, (paragraph 106) the FCC said that ISPs "are not entitled to reciprocal compensation for terminating local telecommunications traffic." However, the FCC explicitly did not comment on whether CLECs that serve ISPs are entitled to reciprocal compensation for terminating Internet traffic. They said that issue was now before the FCC. * * * *

ADDITIONAL INFORMATION AVAILABLE ON REQUEST-- The information contained in this report is based on sources believed to be reliable, but we do not guarantee its completeness or accuracy. This report is for information purposes only and is not intended to be an offer to buy or sell the securities referred to herein. Opinions expressed are subject to change without notice. Past performance is not indicative of future results. From time to time, Legg Mason Wood Walker, Inc. and/or its employees, including the analyst(s) who prepared this report, may have a position in the securities mentioned herein. Precursor Research is a registered trademark of Scott C. Cleland, licensed to Legg Mason Wood Walker, Inc. Member New York Stock Exchange/Member SIPC.

Internet Traffic Terminating Compensation Issue

SEVERAL STATES ACTED PENDING FCC REVIEW OF THIS ISSUE OR RECOGNIZING THAT THEIR ORDERS MAY NEED TO BE LATER MODIFIED BASED ON A FCC RULING.

<i>State</i>	<i>Docket Reference</i>	<i>Quote</i>
Arizona	Petition of MFS for Arbitration of Interconnection Rates, Terms and Conditions with US West Communications, Inc., Docket Nos. U-2752-96-362, et. al., Opinion and Order dated October 23, 1996.	"The Commission will adopt the exemption permitted by the FCC. However, the Agreement should indicate that if and when the FCC modifies the access charge exemption, the Agreement will also be modified." (p. 7)
Delaware	Petition of MCI for the Arbitration of Unresolved Interconnection Issues with Bell Atlantic, Docket No. 97-323, Arbitration Award dated December 16, 1997.	"The FCC may someday reach a clearly contradictory conclusion. However, there is no reason to assume in advance that it will. Moreover, a deferral of authority here appears to leave a substantial gap in the event that there is no such FCC determination. In contrast, exercising authority here to adopt the position urged by BA-DEL presents no substantial problem should the FCC decide in the future that it will use federal authority to negate the action taken here. Thus, there are also substantial practical grounds to favor reaching a decision on this issue in this arbitration, rather than deferring one indefinitely, as BA-Del proposes." (pp. 14-15)
Illinois	Teleport Communications Group Inc. vs. Illinois Bell; Complaint as to Dispute over a Contract Definition, Docket Nos. 97-0404, et al., Order dated March 11, 1998.	"There is no dispute that the FCC is currently considering various issues regarding Internet communications. However, the initiation of that proceeding provides an insufficient basis for deferring a decision here. It is possible that the FCC may reverse itself and institute some type of access charge or other compensation regime which would be applicable to carriers, or ISPs or other telecommunications end-users. It is also quite plausible that the FCC may conclude that the current situation so recently determined by the FCC, should remain undisturbed. The ultimate conclusion, as well as its timing can only be the subject of speculation. This Commission anticipates that if the FCC institutes a change in policy which impacts the interconnection agreements or any other aspect of state policy, the parties will bring that matter to the Commission's attention in an appropriate fashion." (p. 13)

Internet Traffic Terminating Compensation Issue

SEVERAL STATES ACTED PENDING FCC REVIEW OF THIS ISSUE OR RECOGNIZING THAT THEIR ORDERS MAY NEED TO BE LATER MODIFIED BASED ON A FCC RULING.

<i>State</i>	<i>Docket Reference</i>	<i>Quote</i>
Maryland	Complaint against Bell Atlantic-Maryland, Inc. for Breach of Interconnection Terms, and Request for Immediate Relief by MFS Intelenet, Letter to David E. Hall and Andrew D. Lipman by MD P.S.C, dated September 11, 1997.	"Moreover, we note that this matter is currently being considered by the FCC and may ultimately be resolved by it ... In the event that the FCC issues a decision that requires revisions to the directives announced herein, the Commission expects that the parties will so advise it."
Michigan	Application for Approval of an Interconnection Agreement between Brooks Fiber and Ameritech, Case Nos. U-11178, et al., Opinion and Order dated January 28, 1998.	"The Commission concludes that it need not withhold a ruling at this time ... When the FCC rules in the pending docket, the Commission can determine what action, if any, is required." (pp. 14-15)
Missouri	Petition of Birch Telecom for Arbitration of the Rates, Terms, Conditions and Related Arrangements for Interconnection With Southwestern Bell Telephone Company, Case No. TO-98-278, Order dated April 23, 1998.	"The record presented by the parties is not sufficiently persuasive to make a final decision on the reciprocal compensation issue in light of the FCC's pending proceeding on the same issue." (p. 7) "... the Commission finds that it would not be appropriate to determine whether the traffic to ISPs constitutes local traffic until the issue of compensation is resolved by the FCC. The Commission will direct the parties to file a notice with the Commission within ten days after the FCC makes its determination on the reciprocal compensation issue." (p. 7)
West Virginia	Petition for Arbitration of Unresolved Issues for the Interconnection Negotiations between MCI and Bell Atlantic, Case No. 97-1210-T-PC, Order dated January 13, 1998.	"If the FCC should change its position, then the Commission expects interconnection agreements to be applied in accordance with the FCC's new policy." (p. 30) "The Internet-bound traffic issue is currently pending before the FCC." (p. 39) "The Parties shall bring the FCC's final determination regarding this issue to the Commission's attention as soon as possible to allow the Commission to consider whether any further action is appropriate." (p. 40).

Internet Traffic Terminating Compensation Issue

SEVERAL STATES ACTED PENDING FCC REVIEW OF THIS ISSUE OR RECOGNIZING THAT THEIR ORDERS MAY NEED TO BE LATER MODIFIED BASED ON A FCC RULING.

<i>State</i>	<i>Docket Reference</i>	<i>Quote</i>
Wisconsin	Contractual Dispute About the Terms of Interconnection Agreement Between Ameritech and TCG, Docket Nos. 5837-TD-100, et. al., Letter to Ms. Rhonda Johnson and Mr. Mike Paulson by WI P.S.C. Staff dated March 31, 1998.	<p>"Although the FCC may some day reach a different conclusion than the Commission, we have no reason to presume in advance that such will be the case. The parties can always bring any FCC decision to the attention of the Commission, so it can consider whether further action is appropriate." (p. 4)</p> <p>"The Commission also decided that postponing a decision to await a Federal Communications Commission decision is not in the parties' interest or in the public interest."</p>

Internet Traffic Terminating Compensation Issue

STATE ORDERS BASED ON THE NOTION THAT THERE WAS NOTHING IN PREVIOUS FCC RULINGS TO PRECLUDE STATE ACTION AND THAT STATE DECISIONS WERE CONSISTENT WITH PREVIOUS FCC ACCESS REFORM AND/OR UNIVERSAL SERVICE DECISIONS.

<i>State</i>	<i>Docket Reference</i>	<i>Quote</i>
Colorado	Petition of MFS for Arbitration with US West Docket No. 96A-287T, Decision No. C96-1185 dated November 8, 1996.	"We have searched the Act and FCC Interconnection Order and find no reference to this issue." (p. 30)
Connecticut	Petition of the Southern New England Telephone Company for a Declaratory Ruling, Docket No. 97-05-22, Decision dated September 17, 1997.	"The Department considers call originating and terminating between these customers (ISPs and other SNET customers) within the same local calling area to be local, and, therefore, should be subject to the mutual compensation arrangements adopted in the Plan. This is consistent with the FCC's position that ISPs may pay business rates and the appropriate subscriber line charge, rather than interstate access rates, even for calls that appear to traverse state boundaries. Access Charge Order ¶342."
Florida	Complaint of Worldcom Against BellSouth for Breach of Terms of Interconnection Agreement, Docket No. 971478-TP, Memorandum dated February 26, 1998. Commission decision pending.	"Staff believes a finding on the part of the Commission that ISP traffic should be treated as local for purposes of the subject interconnection agreement would be consistent with the FCC's treatment of ISP traffic, all jurisdictional issues aside." (p. 11)
North Carolina	Interconnection Agreement Between BellSouth and US LEC, Docket No. P-55, SUB 1027, Order dated February 26, 1998.	"The FCC has not squarely addressed this issue, although it may do so in the future. While both sides presented extensive exegeses on the obscurities of FCC rulings bearing on ISPs, there is nothing positive in the FCC rulings thus far." (p. 7)
Oklahoma	Application of Brooks Fiber for an Order concerning Internet Traffic, Cause No. PUD 970000548, Order No. 423626 dated June 3, 1998.	"The Commission finds it noteworthy that to date the FCC has not attempted to block those decisions on the grounds that the calls are inherently interexchange and interstate in nature, as alleged by SWBT." (p. 10) "No support has been offered to show that the FCC has acted in any manner to limit or dictate the type of compensation local exchange carriers can assess each other under an interconnection agreement for termination of traffic destined to ISPs." (p. 11)

Internet Traffic Terminating Compensation Issue

STATE ORDERS BASED ON THE NOTION THAT THERE WAS NOTHING IN PREVIOUS FCC RULINGS TO PRECLUDE STATE ACTION AND THAT STATE DECISIONS WERE CONSISTENT WITH PREVIOUS FCC ACCESS REFORM AND/OR UNIVERSAL SERVICE DECISIONS.

<i>State</i>	<i>Docket Reference</i>	<i>Quote</i>
Oregon	Petition of MFS for Arbitration, ARB 1, Arbitration Decision dated November 8, 1996.	"There is no reason to depart from existing law or speculating what the FCC might ultimately conclude in a future proceeding." (p. 13)
Texas	Complaint and Request for Expedited Ruling of Time Warner, Docket No. 18082, Order dated March 2, 1998.	"The Commission agrees with the FCC's view that the provision of Internet service via the traditional telecommunications network involves multiple components." (p. 4)
Washington	<p>(a) Petition for Arbitration Between MFS and US West, Docket UT-960323, Arbitrator's Report and Decision dated November 8, 1996.</p> <p>(b) US West Communications, Inc. v. MFS Intelenet, Inc., et. al., No. C97-222WD, Order on Motions for Summary judgment dated January 7, 1998.</p>	<p>" It is premature to change the treatment of ESPs at this time." (p. 26)</p> <p>"The WUTC did not act arbitrarily or capriciously in deciding not to change the current treatment of ESP call termination from reciprocal compensation to special access fees. The decision was properly based on FCC regulations which exempt ESP providers from paying access charges. See 47 C.F.R. pt. 69." (p. 8)</p>

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STATES THAT DID NOT REFERENCE FCC'S ORDERS OR PENDING FCC ACTION IN THEIR DECISIONS.

<i>State</i>	<i>Docket Reference</i>	<i>Quote</i>
Minnesota	<p>Consolidated Petitions of AT&T, MCImetro, and MFS, for Arbitration with US West, Docket Nos. P-442, et al., Order dated December 2, 1996.</p> <p>No reference to the FCC orders or pending action regarding this issue.</p>	
New York	<p>Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic, Case No. 97-C-1275, Order Closing Proceeding dated March 19, 1998.</p> <p>The only mention of pending FCC action is in the NY Commission's summary of the parties' positions.</p>	
Virginia	<p>Petition of Cox for Enforcement of Interconnection Agreement with Bell Atlantic and Arbitration Award, Case No. PUC970069, Final Order dated October 27, 1997.</p> <p>No reference to the FCC.</p>	