

ORIGINAL



Bell Atlantic  
1320 North Court House Road  
8th Floor  
Arlington, VA 22201  
Voice: (703) 974-4851  
Fax: (703) 974-0259

Tracey M. DeVaux  
Legal Assistant

RECEIVED

OCT 26 1998

EX PARTE OR LATE FILED

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

October 26, 1998

**EX PARTE**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, NW  
Room 222  
Washington, DC 20554

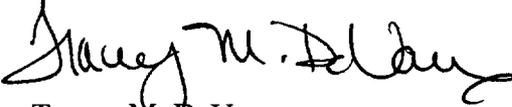
Re: CCB/CPD 97-30, CC 96-98 ✓  
Reciprocal Compensation On Internet Traffic

Dear Ms. Salas:

Please enter the attached letter into the record for the above referenced proceeding. A courier for Bell Atlantic attempted to deliver this to the Secretary's office on Friday, October 23 but arrived at the office at 5:31.

In accordance with Section 1.1206(a)(1) of the Commission's rules, 47 C.F.R. § 1.1206(a)(1), an original and one copy of this notice are being submitted to the Secretary.

Sincerely,

  
Tracey M. DeVaux

cc: Commissioner Furchtgott-Roth  
Kevin Martin  
Paul Misener

No. of Copies rec'd 021  
List A B C D E

Bell Atlantic Network Services, Inc.  
1320 North Court House Road  
8th Floor  
Arlington, Virginia 22201  
(703) 974-2944  
(703) 525-6436 - FAX

Michael E. Glover  
Associate General Counsel

ORIGINAL



October 23, 1998

**EX PARTE**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, NW  
Room 222  
Washington, DC 20554

Re: Reciprocal Compensation On Internet Traffic (Dkts CCB 97-30 and 96-98)

Dear Ms. Salas:

On Thursday, October 22, John Thorne and Mike Glover from Bell Atlantic met with Commissioner Furchtgott-Roth, Kevin Martin and Paul Misener to discuss the issue of reciprocal compensation.

First, the payment of reciprocal deters deployment of competing facilitates because, as one independent analyst explains, it has the “perverse effect of turning customers from assets into liabilities.” *See* S. Cleland, “Reciprocal Comp For Internet Traffic—Gravy Train Running Out of Track,” June 24, 1998. And as the Chairman of Covad, a competing provider of advanced services, recently explained, reciprocal compensation is a “boondogle” that “slows down the deployment of a high-speed packet-based network.” Transcript, Economic Strategy Institute Forum on Section 706, Sept. 16, 1998. This violates Congress’s directive in section 706 of the Act to promote deployment of advanced services to all Americans.

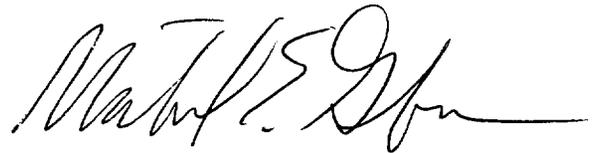
Second, under the Act and the FCC’s prior order, only local traffic is subject to reciprocal compensation. But the FCC’s previous decisions make clear that : 1) Internet traffic is interstate and interexchange in nature; 2) Internet calls consist of a single end to end communication from the end user to a distant Web site or sites; and 3) The FCC’s “enhanced service provider” exemption does nothing to change these facts. Rather, as its name makes clear, the ESP exemption merely exempts Internet service providers from paying the per-minute interstate access charges that otherwise would apply. It does not, and cannot, make those calls local for any other purpose.

Third, Bell Atlantic did not agree in its contracts that Internet traffic should be treated as local. Rather, it agreed only that "local" traffic is subject to reciprocal compensation. These contracts do not expire in the near term; many run through the year 2000.

Fourth, the state commissions that have reached a contrary conclusion have done so based on a misinterpretation of the FCC's previous decisions. The bulk of those state commissions also have recognized that this issue is one that the FCC ultimately must resolve. The attached excerpts were handed out.

Fifth, clarifying that Internet traffic is not subject to reciprocal compensation will allow competing carriers to recover any costs they may incur to exactly the same extent that Bell Atlantic can recover its costs when it delivers traffic to Internet service providers. They can charge Internet service providers for the services they purchase under state tariffs.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Glover", with a long horizontal flourish extending to the right.

Michael E. Glover

cc: Commissioner Furchtgott-Roth  
Mr. Martin  
Mr. Misener

Excerpts From State Commission Orders On  
Internet Reciprocal Compensation

1. "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." MFS Communications Comp., Inc., 1996 WL 787940 \*5 (Ariz. Corp. Com'n Oct. 29, 1996).

2. "The Department considers calls 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 line rates and the appropriate subscriber lines charge, rather than interstate access rates, even for calls that appear to traverse state boundaries." Petition of the Southern New England Telephone Company For a Declaratory Ruling Concerning Internet Services Provider Traffic, Docket No. 97-05-022 at 9 (Conn. Dept. of Pub. Util. Control, Sept. 17, 1997).

3. "The FCC may someday reach a contradictory conclusion. However, there is no reason to assume in advance that it will." Petition of MCI for the Arbitration of Unsolved Interconnection Issues with Bell Atlantic, Docket No. 97-323, Arbitration Award (Del. PSC, Dec. 16, 1997).

4. "The FCC has not yet decided whether ISP traffic is subject to reciprocal compensation.... No FCC order delineates exactly for what purposes the FCC intends ISP traffic to be considered local. ... It appears that the FCC has largely been silent on the issue. This leads us to believe the FCC intended for the states to exercise jurisdiction over the local service aspects of ISP traffic, unless and until the FCC decided otherwise." "Indeed, as recently as April, 1998, the FCC itself indicated that a decision has not been made as to whether or not reciprocal compensation should apply." Complaint of WorldCom Technologies, Inc. against BellSouth Telecommunications, Inc. for breach of terms of Florida Partial Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996, and request for relief, Docket No. 971478-TP, Order No. PSC-98-1216-FOF-TP at 8-9, 20 (Florida P.S.C., Sept. 15, 1998).

5. "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." Teleport Communications Group v. Illinois Bell, Docket No. 97-0404 (Ill. Comm. Com'n., March 11, 1998).

6. "Moreover, we note this issue is currently being considered by the FCC and may ultimately be resolved by it. . . . In the event the FCC issues a decision that requires revision to the directives announced herein, the Commission expects the parties will so advise it." Letter Order by Daniel Gahagan, Executive Secretary, Maryland Public Service Commission, at 1 (Md. PSC Sept. 11, 1997).

7. “We agree with Bell Atlantic that the FCC has jurisdiction over Internet traffic. Pursuant to that authority, the FCC may make a determination in proceedings pending before it that could require us to modify our findings in this Order.” Complaint of WorldCom Technologies, Inc.(successor-in-interest to MFS Intelenet Service of Massachusetts, Inc.) against New England Telephone and Telegraph Company d/b/a Bell 251 and 252 of the Telecommunications Act of 1996, D.T.E. 97-116 at 5, n.11 (Mass. Dept. of Telecom. and Energy, Oct. 21, 1998).

8. “When the FCC rules in the pending docket, the Commission can determine what action, if any, is required.” In re Brooks Fiber Communications of Michigan, Inc., Case No. U-1178, et al., at 15 (Mich. PSC Jan. 28, 1998).

9. “The record presented by the parties is not sufficiently persuasive to move this Commission to make a final decision on the reciprocal compensation issue in light of the FCC’s pending proceeding on the same issue.” “[P]rior to a decision from the Federal Communications Commission on the issue of reciprocal compensation for traffic to ISPs within a local calling scope, the parties shall compensate one another for such traffic in the same manner that local calls to non-ISP end users are compensated, subject to a true-up following the Federal Communication Commission’s determination on the issue.” In re Birch Telecom of Missouri, Inc., 1998 WL 324141 \*3, \*5 (Mo. PSC Apr. 24, 1998).

10. “The Telecommunications Act of 1934 authorized the FCC to regulate interstate communications and carefully preserved the states’ jurisdiction over intrastate communications. (citations omitted). As the parties recognize, the 1996 Act did not change that delineation of responsibility. Therefore, only if traffic to an ISP is ‘interstate’ must the Commission refrain from exercising its authority to require reciprocal compensation.” Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic, Case No. 97-C-1275, 1998 WL 214795 \*1 (N.Y.P.S.C. Mar. 19, 1998).

11. “The FCC has not squarely addressed this issue, although it may do so in the future. While both parties presented extensive exegeses on the obscurities of FCC rulings bearing on ISPs, there is nothing dispositive in the FCC rulings thus far.” In re Interconnection Agreement Between BellSouth Telecommunications, Inc. And US LEC of North Carolina, LLC, Docket No. P-55, SUB 1027 at 7 (N.C. PUC Feb. 26, 1998).

12. “[T]he precise issue under review in the instant case is currently being decided by the FCC. . . . Any ruling by the FCC on that issue will no doubt affect future dealings between the parties on the instant case.” “Instead of classifying the web sites as the jurisdictional end of the communication, the FCC has specifically classified the ISP as an end user. [citation omitted] Given the absence of an FCC ruling on the subject, this court finds it appropriate to defer to the ICC’s finding of industry practice regarding termination.” Illinois Bell Tel. Comp. v. Worldcom Technologies, Inc., No. 98 C 1925, Mem. Op. and Order at 18, 27 (N.D. Ill. July 21, 1998).

13. “We also recognize that the FCC is in the process of considering arguments addressing these broader policy implications. The FCC’s deliberations could, therefore, have an impact on this Commission’s view of the issues presented by the parties in this complaint. We specifically reserve our rights to consider these policy implications in a future proceeding.” Complaint of ICG Telecom Group, Inc. v. Ameritech Ohio, Case No. 97-1557-TP-CSS, at 8 (Pub. Util. Com’n. Ohio, Aug. 27, 1998).

14. “[F]ederal law dictates that the termination point of a call to an ISP for reciprocal compensation purposes is the location of the ISP.... [T]he policy established by the FCC and followed by SWBT is that ISPs be treated as end users, and the interconnection agreement should be interpreted in the context of that policy.” “Irrespective of how the FCC’s 1983 access charge exemption policy might otherwise be interpreted, for purposes of this cause the more recent Telecommunications Act and the FCC’s Universal Service Order would provide the controlling federal precedent. . . . 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.” In re Application of Brooks Fiber Communications of Oklahoma, Inc., Cause No. 970000548, Order 423626, at 8, 10-11 (Okla. PSC June 3, 1998).

15. Based on MFS’s argument that the issue is governed by the enhanced service provider exemption, “[t]here is no reason to depart from existing law or speculating what the FCC might ultimately conclude in a future proceeding.” In re MFS Communications Comp., Inc., 1996 WL 768931 \*13 (Or. PUC Dec. 9, 1996).

16. An important consideration is “whether or not pending FCC proceedings counsel in favor of deferring action,” but “the FCC has had occasion to state its position on the issue and has not, thus far, definitively addressed the issue.” Petition for Declaratory Order of TCG Delaware Valley, Inc., P-00971256 at 20 (Pa. PUC June 16, 1998).

17. “All parties agree that the FCC has for many years declared that enhanced service providers, which include ISPs, may obtain services as end users under intrastate tariffs.” “Based upon the long-standing position of the FCC that existed years before the execution of the Interconnection Agreement, the Hearing Officer concludes that the term ‘Local Traffic’ . . . includes, as a matter of law, calls to ISPs.” In re Petition of Brooks Fiber, Docket No. 98-00118 (Tenn. Reg. Auth. Apr. 21, 1998).

18. “The Commission agrees with the FCC’s view that the provision of Internet service via the traditional telecommunications network involves multiple components;” the FCC has recognized that this position should be reviewed in a future FCC proceeding.” Complaint and Request for Expedited Ruling of Time Warner Communications, PUC Docket No. 18082 at 4 (Tex. PUC, Feb. 27, 1998).

“[R]ecognizing all along that the Federal Communications Commission has not decided the specific issue of whether local phone companies are entitled to reciprocal compensation for terminating Internet traffic, the Court’s judgment to deny Plaintiff’s request for declaratory and injunctive relief shall stand.” Southwestern Bell Telephone Company v. Public Utility Commission of Texas, MO-98-CA-43 (W.D. Texas, July 20, 1998).

19. “It is premature to change the treatment of ESPs at this time.” Petition for Arbitration of an Interconnection Agreement Between MCI Communications Company, Inc. and US WEST Communications, Inc. Pursuant to 47 USC Section 252, Docket No. UT-960323, Arbitrator’s Report and Decision at 26 (Wash. Util. and Trans. Com’n., Nov. 1996).

20. “[T]he Commission agrees that a final determination on this matter rests with the FCC. . . . If the FCC should change its position, then the Commission expects interconnection agreements to be applied in accordance with the FCC’s new policy. Moreover, the parties will be directed to bring the FCC’s final determination to the Commission’s attention in order to allow it to consider whether any further action is appropriate.” MCI Telecommunications Corporation, Case No. 97-1210-T-PC at 29-30 (W.Va. PSC Jan. 13, 1998).

21. Recognizing that the issue is pending at the FCC but concluding that “postponing a Commission decision to await a Federal Communications Commission decision is not in the parties’ interest or in the public interest.” Letter Order from Lynda L. Dorr, Secretary to the Public Service Com’n of Wisconsin, to Rhonda Johnson and Mike Paulson, 5837-TD-100, 6720-TD-100 (Wisc. PSC May 13, 1998).

October 22, 1998