

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

1200 19<sup>TH</sup> STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

FACSIMILE

(202) 955-9792

WRITER'S DIRECT LINE

(202) 955-9664

WRITER'S E-MAIL

jcanis@kelleydrye.com

**EX PARTE OR LATE FILED**

October 27, 1998

**RECEIVED**

OCT 27 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

NEW YORK, NY  
LOS ANGELES, CA  
MIAMI, FL  
CHICAGO, IL  
STAMFORD, CT  
PARSIPPANY, NJ  
BRUSSELS, BELGIUM  
HONG KONG  
AFFILIATE OFFICES  
BANGKOK, THAILAND  
JAKARTA, INDONESIA  
MANILA, THE PHILIPPINES  
MUMBAI, INDIA  
TOKYO, JAPAN

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

**Re: Notification of Ex Parte Presentation**

GTE Telephone Operators, GTOC Tariff No. 1,  
GTOC Transmittal No. 1148  
CC Docket No. 98-79

BellSouth Telecommunications, Inc. BellSouth Tariff FCC No. 1  
BellSouth Transmittal No. 476  
CC Docket No. 98-161

Pacific Bell Telephone Company, Pacific Bell Tariff FCC No. 128  
Pacific Transmittal No. 1986  
CC Docket No. 98-103

Bell Atlantic Telephone Companies, Tariff No. 1  
Bell Atlantic Transmittal No. 1076  
CC Docket No. 98-168

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, Association for Local Telecommunication Services ("ALTS") provides notice of three oral *ex parte* presentations related to the above-captioned docketed proceedings on October 26, 1998. The presentations were made by Ms. Cronan O'Connell of ALTS, Ms. Susan McAdams of Electric Lightwave,

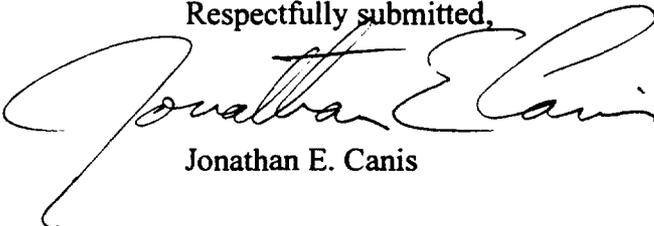
KELLEY DRYE & WARREN LLP

Magalie R. Salas, Secretary  
October 27, 1998  
Page Two

Ms. Janet Livengood of Hyperion Communications, Mr. Richard Rindler of Swidler & Berlin, and Mr. Jonathan Canis of Kelley, Drye & Warren. The presentations were made to Mr. Kyle Dixon, Legal Advisor to Commissioner Powell; Mr. Paul Gallant, Legal Advisor to Commissioner Tristani; and to Mr. Rich Lerner, Deputy Chief, Competitive Pricing Division, Ms. Tamara Preiss, Attorney-Advisor, Competitive Pricing Division, and Mr. Edward Krachmer, Attorney-Advisor, Competitive Pricing Division. During the presentations, the parties discussed a variety of issues related to the dedicated asynchronous digital subscriber line ("ADSL") services specified in the above-referenced tariff proceedings. Specifically, the parties discussed issues relating to the scope of the Commission's tariff investigations in this proceeding and the potential effect that the decision rendered in the instant investigation could have on other parties, as well as on other Commission policies. ALTS requested that the Commission clarify that the decision rendered in the instant proceeding pertain only to the dedicated Internet traffic service proposed in the incumbent local exchange carrier ("ILEC") tariffs. ALTS also distributed handouts during these presentations, copies of which are attached to this filing.

Pursuant to 1.1206(b)(2), Intermedia submits an original and one (1) copy of this oral *ex parte* notification for inclusion in the public record of each above-referenced proceedings. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,



Jonathan E. Canis

cc: Kyle Dixon, Esq.  
Paul Gallant, Esq.  
Rich Lerner, Esq.  
Tamara Preiss, Esq.  
Edward Krachmer, Esq.  
International Transcription Service

# **Reciprocal Compensation**

**ALTS Discussion**  
**October 26, 1998**

# Status to Date

---

- 23 states and 3 courts have ruled that dial-up calls to ISPs are local traffic
  - AZ, CA, CO, CT, FL, IL, MA, MD, MI, MN, MO, NC, NY, OH, OK, OR, PA, TN, TX, VA, WA, WV, WI
- ILECs are using DSL tariffs, USTA print and radio ads, and letter from Senators' Burns and Brownback to get out of contracts

# Precedent of Memory Call Decision

---

- Not controlling in this case
  - Facts are opposite -- basic service was interstate, enhanced was local
- In that decision there was a clear conflict between GA PSC and FCC policies
  - Here States are in line with FCC policy
- Memory Call decision supports ALTS position
  - FCC found that Memory Call traffic could be jurisdictionally mixed

# Recommendation

## ■ DSL Tariffs

- Allow the DSL tariffs to remain in effect
- Defer decision of "one-call" versus "two-call" to comprehensive proceeding
- State that these services are not exchange access
  - | Call does not access toll network
  - | BellSouth and U S West agree that this traffic does not fall within the Communications Act definition of exchange access
- State that this ruling does not effect current treatment of dial up calls to internet providers in existing agreements
- Continue to defer to states to oversee interconnection agreements and reciprocal compensation

## ■ Dial Up ISP Traffic

- Address Commission's jurisdiction over Internet bound traffic in another open proceeding

# **Background**

## **How We Got to This Point**

# **ILECs Dictated this Method for Cost Recovery of ILEC-CLEC Calls**

- ILECs dictated reciprocal compensation for cost recovery of calls
  - CLECs argued for bill and keep
- ILECs set the rates
- No contracts called for measuring dial up traffic to ISPs
- ILECs have had the ability to renegotiate the agreements but chose to seek federal bail out
- If these calls are exempted from reciprocal compensation -- what type of call will be exempt next
  - l Inbound reservations
  - l Inbound catalog sales

# Federal Bailout is Bad Law and Policy

---

- Calls have been completed
- Costs for termination were incurred by CLECs
  - RBOCs have stated that once FCC rules on DSL tariffs, they will require full reimbursement for all payments made to date under dial-up contracts
- If FCC allows bail-out, there will be no other means for cost recovery
- ILEC proposals put complete CLEC cost recovery under total control of ILEC

# **Reciprocal Compensation**

**ALTS Discussion**  
**October 26, 1998**

# Status to Date

---

- 23 states and 3 courts have ruled that dial-up calls to ISPs are local traffic
  - AZ, CA, CO, CT, FL, IL, MA, MD, MI, MN, MO, NC, NY, OH, OK, OR, PA, TN, TX, VA, WA, WV, WI
- ILECs are using DSL tariffs, USTA print and radio ads, and letter from Senators' Burns and Brownback to get out of contracts

# Precedent of Memory Call Decision

---

- Not controlling in this case
  - Facts are opposite -- basic service was interstate, enhanced was local
- In that decision there was a clear conflict between GA PSC and FCC policies
  - Here States are in line with FCC policy
- Memory Call decision supports ALTS position
  - FCC found that Memory Call traffic could be jurisdictionally mixed

# Recommendation

## ■ DSL Tariffs

- Allow the DSL tariffs to remain in effect
- State that these services are not exchange access
  - | Call does not access toll network
  - | BellSouth and U S West agree that this traffic does not fall within the Communications Act definition of exchange access
- State that this ruling does not effect current treatment of dial up calls to internet providers in existing agreements
- Continue to defer to states to oversee interconnection agreements and reciprocal compensation

## ■ Dial Up ISP Traffic

- Address Commission's jurisdiction over Internet bound traffic in another open proceeding

# **Background**

## **How We Got to This Point**

# **ILECs Dictated this Method for Cost Recovery of ILEC-CLEC Calls**

- ILECs dictated reciprocal compensation for cost recovery of calls
  - CLECs argued for bill and keep
- ILECs set the rates
- No contracts called for measuring dial up traffic to ISPs
- ILECs have had the ability to renegotiate the agreements but chose to seek federal bail out
- If these calls are exempted from reciprocal compensation -- what type of call will be exempt next
  - Inbound reservations
  - Inbound catalog sales

# Federal Bailout is Bad Law and Policy

---

- Calls have been completed
- Costs for termination were incurred by CLECs
  - RBOCs have stated that once FCC rules on DSL tariffs, they will require full reimbursement for all payments made to date under dial-up contracts
- If FCC allows bail-out, there will be no other means for cost recovery
- ILEC proposals put complete CLEC cost recovery under total control of ILEC