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November 5, 1998

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

Re: **Written *Ex Parte* Presentation by the Association for Local Telecommunications Services**
Reciprocal Compensation for Local Calls to ISPs; CC Docket No. 96-98; CCB/CPD No. 97-30; CC Docket Nos. 98-79, 98-103, 98-161 & 98-168

Dear Ms. Salas:

Pursuant to § 1.1206(b)(1) of the Commission's Rules, the Association for Local Telecommunication Services ("ALTS") submits this written *ex parte* presentation related to the above-captioned docketed proceedings. This filing is submitted in response to the Commission's Order of October 30, 1998, in the above-captioned docketed proceeding. It is of critical importance to ALTS' members that, if the Commission should assert jurisdiction over dial-up calls to Internet service providers ("ISPs"), such action must not disrupt existing compensation arrangements that are currently governed by interconnection agreements, and that have been the subject of final decisions by 23 State regulatory commissions.

In order to eliminate any ambiguity that could have such a disruptive effect, this presentation provides proposed language regarding the Commission's jurisdiction over dial-up calls to ISPs in a way that ensures the integrity of the decisions by the 23 State regulatory bodies that mandate payment of reciprocal compensation when such traffic is passed between incumbent and competitive local exchange carriers.

Pursuant to 1.1206(b)(1), ALTS submits an original and one (1) copy of this written *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: Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Harold Furchtgott-Roth
Commissioner Michael K. Powell
Commissioner Gloria Tristani
International Transcription Service

THE COMMISSION CAN PRESERVE EXISTING STATE RULINGS WHILE RETAINING COMPLETE AUTHORITY TO BUILD A FUTURE COMPENSATION SYSTEM FOR INTER-CARRIER EXCHANGE OF DIAL-UP TRAFFIC TO ISPS.

- The Commission must include specific language in its upcoming order concerning reciprocal compensation for switched calls to ISPs to insure that state decisions and existing interconnection agreements involving this traffic are not disrupted (ALTS and Time Warner have submitted such language).

- The Commission has the full authority to preserve the effectiveness of state decisions and existing interconnection agreements while retaining the discretion to create a federal reciprocal compensation model that would apply to this traffic upon the termination of the existing contracts.

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AS AMPLIFIED BY ALTS AND TIME WARNER'S EX PARTES, THE COMMISSION'S GTE ADSL ORDER ADVANCED THREE GROUNDS IN DISTINGUISHING BETWEEN SWITCHED AND SPECIAL CONNECTIONS TO ISPS (PARA. 2):

I. "...THE APPLICABILITY OF A SEPARATE BODY OF COMMISSION RULES AND PRECEDENT REGARDING SWITCHED ACCESS SERVICE"

- The basic distinction between switched and special access is a fundamental aspect of telecommunications regulatory policy. The GTE ADSL Order does not alter this long standing regulatory bifurcation.

- Concerned that the assessment of switched access charges on ISPs would deter development of the Internet, the Commission has ruled that ISPs can receive switched calls via local exchange tariffs rather than by switched access (the "ESP Exemption"). The ESP Exemption has been in effect for fifteen years and been repeatedly upheld, most recently by the Eighth Circuit.

- Unless and until the Commission creates a new federal scheme for this traffic, if calls to ISPs are not compensated in the same manner as other calls terminated by LECs pursuant to local exchange tariffs, the goal of the ESP exemption will be eroded.

- The ESP exemption is currently implemented by treating calls to ISPs as "local" for all purposes, including separations, ARMIS, state rate cases, etc.

II. "...THE APPLICABILITY OF ANY RULES AND POLICIES RELATING TO INTERCARRIER COMPENSATION WHEN MORE THAN ONE LOCAL EXCHANGE CARRIER TRANSMITS A CALL FROM AN END USER TO AN ISP"

- As the GTE ADSL Order recognizes by raising in para. 2 the issue of intercarrier compensation, the Commission must not create a situation where no scheme is in place to compensate carriers for calls originating on ILEC networks that CLECs deliver to ISPs.

- When there is inter-company carriage, both carriers incur cost and must be compensated.

- Absent reciprocal compensation, there is no regulatory compensation scheme that would compensate ILECs and CLECs for dial-up ISP calls. Consequently, the Commission must insure no ambiguity exists during the time prior to commencement of any new federal scheme.

- As elaborated in ALTS and Time Warner's ex partes, there are at least three fundamental statutory bases that require intercarrier compensation:

- The Commission's fundamental ratemaking obligations under Sections 152(a) and 201-205 of the Act.

- The obligation under Section 202(a) to prevent discrimination when carriers perform like services by exchanging local voice traffic as compared to exchanging circuit-switched ISP traffic.

- Reciprocal compensation applies because the local "telecommunications" portion of the interstate "communications" by wire terminates at the ISP under Section 251(b)(5).

- Thus, if the Commission issues an NPRM on this issue it must adopt and ratify existing contracts pending rulemaking

III. "...THE APPLICABILITY OF INTERCONNECTION AGREEMENTS UNDER SECTIONS 251 AND 252 OF THE COMMUNICATIONS ACT"

- The agreements negotiated by ILECs and CLECs should be used to govern compensation arrangements for dial-up calls to ISPs through the end of the term of the agreements to preserve the parties' contractual expectations.