



Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Ms. Magalie Roman Salas  
October 30, 1998  
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Copies of these documents are also being served on the Commission personnel that participated in the conference call with David Ellen and the Commission personnel that received the facsimile copies of the attached documents.

Sincerely,

A handwritten signature in black ink, appearing to read "Cherie R. Kiser". The signature is fluid and cursive, with a large loop at the end.

Cherie R. Kiser  
Counsel, Cablevision Lightpath, Inc.

Attachments

cc: Paul Gallant  
Christopher J. Wright  
Thomas Power  
Kevin Martin  
Jim Casserly  
Kyle Dixon  
Robert Pepper  
Kathryn C. Brown  
Lisa Zaina  
Jim Schlichting  
David Ellen  
Lee Schroeder

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## Key Issues For Consideration On Reciprocal Compensation

*In view of the Commission's current deliberations on reciprocal compensation for the termination of Internet traffic, we would strongly urge the Commission to consider the following issues in any notice that is issued.*

According to the procedures set out in Section 252, State Commissions have carefully reviewed and interpreted interconnection agreements between ILECs and CLECs.

- Should deference be paid to State Commissions that have carefully reviewed the issue of whether reciprocal compensation should be paid for the termination of ISP calls?
- Does Section 251(b)(5), read in conjunction with the Eighth Circuit decision, require that State Commission rulings prevail in terms of defining traffic for the purposes of reciprocal compensation?\*

Both the FCC and the State Commissions have recognized that there are costs incurred by carriers for the termination of traffic.

- In light of this reality, is it economically justifiable to exempt traffic from current compensation regimes based on the identity of the customer to which the traffic is being terminated?

Given the costs associated with the termination of traffic, ad hoc readjustment of the compensation regime could result in significant rate realignment, including substantial pressure on end user local rates.

- Prior to any precipitous action, how should the FCC and the State Commissions work closely together to frame an approach that supports economically rational payment schemes while protecting against local rate increases?

Consistent with the 1996 Act, CLECs and ILECs have negotiated vigorously to reach interconnection agreements, and in the course of those negotiations carriers made calculated tradeoffs based on their business strategies. The introduction of competitive services by the CLECs are heavily dependent on these interconnection arrangements, particularly the provisions to recover the costs associated with the termination of traffic. A midstream change in the compensation policy would seriously disrupt CLEC entry strategies. Thus it is critical that any action maintain the integrity of existing interconnection agreements and the negotiating process on a forward going basis.

- How can this be achieved?

\* See Attachment

## Jurisdiction

### Key Point

- At least until the Supreme Court clarifies whether the FCC has authority to issue its own interpretation of section 251(b)(5), the FCC should avoid a jurisdictional conflict by clarifying that its general exercise of section 201 authority over Internet traffic does not apply, for carrier-to-carrier reciprocal compensation purposes only, in states where there has been an authoritative ruling that the carrier-to-carrier reciprocal compensation obligation set forth in section 251(b)(5) of the 1996 Act applies to Internet traffic.

### Rationale

- From a jurisdictional perspective, the FCC is entitled under section 201 of the 1934 Act to regard Internet traffic as interstate in nature -- and has regarded it as such many times in the past -- and is thus entitled, *as a general matter*, to assume jurisdiction over Internet traffic.
- At the same time, in certain states such as New York, there have already been *authoritative* rulings that the carrier-to-carrier reciprocal compensation obligation set forth in section 251(b)(5) of the 1996 Act applies to Internet traffic. Under the Eighth Circuit ruling (unless and until the Supreme Court decides otherwise), state commissions are assigned authority to interpret section 251(b)(5), subject to federal court review.
- These rulings of state commissions under section 251(b)(5) can coexist with the FCC's general assumption of section 201 jurisdiction over Internet traffic, *so long as that jurisdiction is exercised consistently with these section 251(b)(5) rulings*.
- In the event of a conflict, traditional canons of statutory construction indicate that a ruling under section 251(b)(5) would prevail over a ruling under an earlier-enacted, more general provision such as section 201.