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November 13, 1998

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Ex Parte  
Reciprocal Compensation for Dial-up Calls to ISPs  
CC Docket No. 98-96 / CPD No. 97-30

Dear Ms. Salas:

Pursuant to Sections 1.1206(b)(1) and (2) of the Commission's rules, 47 C.F.R. Sections 1.1206(b)(1) and (2), I am providing this notice of *ex parte* presentations in the above captioned matters.

Yesterday, on behalf of KMC Telecom, Inc., Richard Rindler of this firm and myself met with Thomas Power, Legal Advisor to Chairman Kennard, concerning reciprocal compensation for dial-up calls to Internet Service Providers. We provided to Mr. Power the attached documents which summarize our presentation.

Four copies of this letter and attachments are enclosed.

Sincerely,



Patrick Donovan

cc: Thomas Power  
Tamara Preiss  
Ed Krachmer

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### RECIPROCAL COMPENSATION FOR DIAL-UP CALLS TO ISPs

- Assume that dial-up calls to ISPs are jurisdictionally interstate on an end-to-end analysis. It is irrelevant to jurisdiction that part of the communication is an information service.
- The Commission has consistently held that the telecommunications component of an information service loses any separate status for legal and regulatory purposes:
  - Under the *Computer II* "contamination doctrine" a service comprised in part of enhanced services becomes for regulatory purposes entirely an enhanced service.
  - In *Computer II* the Commission determined that enhanced services would not be subject to Title II notwithstanding that enhanced services are "offered over common carrier transmission facilities used in interstate communications."
  - In the *Stevens Report*, the Commission:
    - stated that the separate telecommunications parts of Internet access service would not be given a separate "legal status"; and
    - determined that information and telecommunications services are mutually exclusive definitions under the Act.
  - In the *Universal Service Order* the Commission determined that ISPs would not be required to contribute to universal service notwithstanding that information services are provided "via telecommunications."
- The definition of information services as being provided "via telecommunications" merely codified past Commission policy. It does not mean that the Commission must, or may, now attach separate legal status and regulatory consequences to the telecommunications component of information services.
- Given its past practice and interpretation of the Act, the Commission should determine that for regulatory purposes the telecommunications portion of a dial-up call to an ISP ends where the information service begins, and that, therefore, dial-up calls to ISPs are subject to reciprocal compensation under Section 251(b)(5).
- This would not limit federal rulemaking authority over ISPs use of the network to originate and terminate interstate communications. Only inter-carrier compensation for dial-up calls to ISPs would be subject to the Section 251/252 regulatory framework.
- The *Local Competition Order* recognized that the 1996 Act created a new regulatory paradigm in which states would have authority over some historically interstate matters, and *vice versa*.

**INTERSTATE END-TO-END**

**251(b)(5) Intercarrier Compensation**

