

EX PARTE OR LATE FILED

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November 13, 1998

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

Re: **Ex Parte Presentation:** CC Docket No. 96-98 (CCB/CPD 97-30)

Dear Ms. Salas:

Pursuant to Section 1.1206 of the Federal Communications Commission's Rules of Practice and Procedure, enclosed for inclusion in the public record are two copies of the written ex parte presentation to Chairman Kennard in the referenced docket.

Thank you for your assistance.

Yours very truly,

WRIGHT, LINDSEY & JENNINGS LLP

  
N. M. Norton

NMN:jl  
Enclosures

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November 13, 1998

Chairman, William E. Kennard  
Federal Communications Commission  
1919 M Street, N.W. - Room 814  
Washington, D.C. 20554

Re: Ex Parte Presentation: CC Docket No. 96-98 (CCB/CPD 97-30)

Dear Chairman Kennard:

Connect Communications Corporation ("CONNECT") files this letter to present its views on the Commission's upcoming decision on reciprocal compensation for dial-up Internet traffic passing across incumbent local exchange carrier ("ILEC") and competitive local exchange carrier ("CLEC") networks. In CONNECT's view, this upcoming decision provides the Commission with an opportunity to reaffirm the treatment of CLECs under the Telecommunications Act of 1996 and to hasten competition at all levels of the advanced services markets.

CONNECT is a CLEC, and with affiliate companies, own switches currently being deployed in 18 markets in 14 states. CONNECT has reviewed the GTE ADSL Tariff Order released last week and understands that the Commission intends to release an order regarding whether CLECs are "entitled to receive reciprocal compensation when they deliver to information service providers, including Internet service providers, circuit-switched dial-up traffic originated by interconnecting LECs." (Order at pp. 1-2.)

CONNECT believes that the Commission should resolve this question and promote a competitive local exchange market by observing existing public policy and the practical realities of the emerging competitive local exchange market as part of this upcoming decision.

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First, there is no compelling reason for the Commission to do anything other than affirm that the States have jurisdiction over the issue. Intervention in a competitive market to rescue ILECs from business decisions is not the role of the Commission. Congress and this Commission have expressly endorsed a policy of preserving a "vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by federal or state regulation." 47 U.S.C. § 230(b)(2); Access Charge Reform Order, 12 FCC Rcd. 15982, 16133. An indispensable element of such a market is local access to customers. The cost (price) of this access, like the cost of all other Internet related services, should be determined by the market place, more particularly, through negotiated or arbitrated interconnection agreements between competing carriers. (See also, 47 U.S.C. §§ 251(b)(5) and 252(d)(2).)

Second, the Commission must acknowledge CLECs' justified reliance on previous Commission orders exempting enhanced service providers from the application of interstate access charges (and declaring such providers end users) when CLECs priced terminating access rates for ILEC-originated traffic to CLECs' internet service provider ("ISP") customers. This reliance interest is confirmed by twenty-three (23) state regulatory commission decisions, NARUC resolutions and numerous federal district courts. By denominating ISP access traffic interstate and asserting jurisdiction over the pricing of such traffic, the Commission would effectively disrupt the emergence of actual market pricing for such services, and bail ILECs out of unfavorable interconnection agreement terms, which were agreed to after arms-length negotiations. A deal is a deal. A deal is not forever. Over time, new agreements will be struck, and, now that the contracting parties are sensitive to this pricing issue, future negotiations and arbitrations will drive the cost of ISP access to cost, which should be the goal of any Commission pricing policy. By leaving this reciprocal compensation issue to the States, the Commission would avoid the unnecessary filing of thousands of new interstate access tariffs in order to address the intercompany compensation question. State regulation of ISP access traffic pricing via the Federal Act would not negate the Commission's exercise of its lawful authority over interstate communications, rather, such action would further it.

Third, the Commission should not consider this issue in isolation. The service for which ILECs and CLECs pay each other reciprocal compensation is, practically speaking, the same service for which IXCs pay ILECs and CLECs to terminate long distance calls. With the establishment of the Universal Service Fund, there is no ongoing reason for access charges to subsidize local service. Therefore, if the Commission elects to set the rate for reciprocal compensation to zero, then it would

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have to set the rate for interstate access charges to zero also. Otherwise the Commission would be making policy that unfairly discriminates against LECs which serve ISP customers. In effect, the Commission would be saying, "when the balance of payments goes to ILECs the rate for completing calls will be .02/minute (the interstate access tariff rate), but when the balance of payments goes to CLECs the rate will be .00/minute." Accordingly, if the Commission elects to exert jurisdiction on this issue, it should be done in conjunction with access tariff reform.

The Commission should act swiftly so as to stop the jurisdiction shopping that is currently going on. ILECs are using the fact that the Commission may rule on this matter as a reason to ask local regulatory authorities to postpone rulings. After the Commission rules, the ILECs are likely to shop the issue in the courtrooms. These delaying tactics have an anti-competitive effect by increasing uncertainty and regulatory and legal expenses for CLECs. A swift and decisive ruling by the Commission should be aimed at minimizing the efficacy of any such attempts at this abuse of process. Furthermore, clear and unambiguous language should be used to minimize the time and expense CLECs will have to expend fighting ILEC appeals to the courts.

Finally, while CONNECT does not believe that it is appropriate for the Commission to rule on this issue, in the event the Commission does claim jurisdiction on this matter, CONNECT concurs with the comments of CIX regarding the grandfathering of existing contracts:

Incumbent LECs and CLECs should compensate each other pursuant to the negotiated interconnection agreements in effect; state decisions on compensation should not be retroactively undone by the Commission, especially since reciprocal compensation was a methodology endorsed by the incumbent LECs with the 1996 Act. Rather, if the Commission applies its rationale in the GTE ADSL Tariff Order to dial-up access arrangements, then such a modification of existing Commission policy should apply on a prospective basis only, for agreements entered into past some future date. (CIX Ex Parte Presentation, November 4, 1998.)

Furthermore, to avoid costly litigation for CLECs the Commission should be very clear that existing agreements will remain in effect for the entire duration of agreement, including any renewal terms or month to month continuing periods pending the execution of a new agreement mutually agreed upon by the parties and approved by the local state regulatory body.

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Please feel free to call on CONNECT if you or other members of the Commission wish to discuss these issues further. In accordance with the ex parte rules, two copies of this letter will be filed with the Commission's Secretary's office for inclusion in the above-referenced docket.

Sincerely,

WRIGHT, LINDSEY & JENNINGS LLP



N. M. Norton

NMN/jcl

cc: Commissioner Harold Furchtgott-Roth  
Commissioner Susan Ness  
Commissioner Michael Powell  
Commissioner Gloria Tristani