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November 25, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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BY HAND

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

Re: Docket CCB/CPD 97-30 and CC Docket 96-98

Dear Ms. Salas:

On November 25, 1998, on behalf of America Online, Inc. ("AOL"), the attached letter was sent to Chairman Kennard, Commissioner Susan Ness, Commissioner Michael Powell, Commissioner Harold Furchtgott-Roth and Commissioner Gloria Tristani, regarding the above-referenced dockets.

Pursuant to Section 1.1206(a) of the Commission's Rules, two copies of this written document are attached for inclusion in the public record in the above-captioned proceedings. Should you have an questions regarding this matter, please contact me.

Sincerely,



Donna N. Lampert

Attachments

No. of Copies rec'd OK 4
List A B C D E



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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Commissioner Michael K. Powell
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

Re: Docket CCB/CPD 97-30 and CC Docket 96-98

Dear Chairman Kennard and Commissioners:

On October 30, 1998, the FCC issued an Order in which it found GTE's ADSL service to be an interstate special access service.¹⁷ In that order, the FCC stated that it issue would a separate decision regarding reciprocal compensation by interconnecting local exchange carriers ("LECs") in situations involving the delivery of circuit-switched dial-up traffic delivered to Internet Service Providers ("ISPs"). As explained below, America Online, Inc. ("AOL") urges the FCC, as it establishes its policies in this area, to reemphasize the vital importance of maintaining a regulatory framework that fosters the continued growth and development of the Internet.

¹⁷ In the Matter of GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148, Memorandum Opinion and Order, CC Docket 98-79, FCC No. 98-292 (October 30, 1998).



The FCC, Congress, and the Administration have consistently recognized the important economic contribution to this country of the Internet online medium, as well as the broad social, political and educational benefits the Internet offers to all Americans.^{2/} In that regard, the FCC should underscore that it is a core policy goal of the Commission to ensure that its rules and policies foster competitiveness and affordability in the telecommunications infrastructure on which the Internet rests. As such, the FCC should stress that consumer-friendly telecommunications compensation arrangements are critical to economic, efficient Internet access to consumers and emphasize that the existing regime has well served this public policy. Through this forward-looking policy, the U.S. can continue its position as the global leader in defining a pro-consumer telecommunications policy framework, encouraging pro-competitive, market-driven Internet development throughout the world.

In this regard, the FCC should expressly conclude in its upcoming decision that its overarching goal is to promote a compensation regime for interconnecting carriers transmitting ISP-bound traffic that does not disrupt the economic underpinnings for the delivery of such traffic that exist today.

Indeed, to ensure that the Commission's decision will not have any unintended consequences, it is important for it to make clear that even to the extent that such ISP-bound circuit-switched traffic may be characterized as "interstate," it is not analogous to traffic delivered to interexchange carriers ("IXCs"). In this respect, the FCC should reiterate that in the circuit-switched, dial-up environment, ISP traffic is, from the perspective of the local exchange carrier, functionally the same as local traffic. Thus, as the Commission has recognized, not only are ISPs not carriers, they do not use the network in a manner analogous to IXCs.^{3/}

As the FCC has consistently found, ISPs use the network in a manner analogous to other local users and, as such, there is no basis to distinguish between ISP traffic and local traffic.^{4/} Thus, the FCC should also underscore its previous holdings that ISPs are not telecommunications carriers but rather are users of telecommunications services.^{5/} To that end, the FCC should re-affirm its commitment to a framework that continues to ensure, for all purposes, that ISPs are treated as end users rather than as carriers. As a consequence, the FCC should specifically refer to its conclusion that LECs may not assess upon ISPs the per-minute access charges that are imposed upon IXCs.^{6/} Moreover, to eliminate any potential uncertainty that could engender future controversy and/or litigation, the Commission should stress that it will not permit LECs to impose indirectly on other carriers those charges that they may not impose directly on ISPs.

^{2/} See, e.g., Section 230 of the Telecommunications Act of 1996, 47 U.S.C. Section 230 (1996).

^{3/} See Access Charge Reform Order, CC Docket 96-262, FCC No. 97-158, ¶ 345 (May 16, 1997).

^{4/} Id.

^{5/} See, e.g., Federal-State Joint Board on Universal Service, CC Docket 96-45, Report to Congress, 13 FCC Rcd 11501 (1998).

^{6/} Access Charge Reform Order at ¶¶ 344-348.

Finally, to promote the economic certainty needed to foster the development of the Internet online medium, the FCC should hold that the existing negotiated arrangements between interconnecting LECs regarding the delivery of ISP traffic serve the public interest and state expressly that it is the FCC's policy not to disturb these arrangements. In this vein, the FCC should make clear that, in the exercise of its broad discretion, it believes that state public utility commissions have properly concluded, based upon the FCC's legal conclusions, that enforcing reciprocal compensation payments between interconnecting LECs for such traffic was reasonable. Should the Commission decide to commence additional proceedings on this issue, AOL also urges the FCC to exercise its jurisdiction on a prospective basis in a manner that will assure negotiated arrangements between interconnecting LECs that do not distinguish between ISP-bound traffic and local traffic. The FCC should also propose a regime that allows the parties, in the event of a disagreement, to proceed with a single state arbitration, just as they do today.

AOL applauds the FCC's strong commitment to the public interest in the continued growth of the Internet online medium. Notably, the FCC's broad discretion to pursue its sound public policy goals in this area has recently been upheld by the Eighth Circuit Court of Appeals.^{7/} To promote Internet growth, the FCC should ensure that its actions cannot be used to undermine the economic foundation of affordable consumer access to Internet online services.

Respectfully submitted,



George Vradenburg, III
Senior Vice President for
Global and Strategic Policy

cc: Kathryn C. Brown
Lawrence E. Strickling
James D. Schlichting
Robert Pepper
Jane Jackson
Richard Cameron
Tamara Preiss
Tom Power
James Casserly
Kevin Martin
Kyle Dixon
Paul Galant

^{7/} Southwestern Bell Telephone v. FCC, Case No. 97-2618 (8th Cir., Aug. 19, 1998).