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January 22, 1999

BY HAND DELIVERY
Magalie Salas, Esquire
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Computer III Further Remand Proceedings, CC Docket Nos. 95-20, 98-10.

Ex Parte Communication

Dear Ms. Salas:

On behalf of the Internet Service Providers' Consortium (ISP/C), and pursuant to Section 1.1206(b)(2) of the Commission's Rules, I am filing the original and three copies of this letter to report an oral ex parte communication in the above-referenced proceeding.

Yesterday Roxanne Loveday, President of ISP/C, co-counsel Kathryn A. Kleiman, and I met with Carol Mattey, Staci Pies, Jonathan Reel, Ann Stevens, and Jeffrey Dygert of the Common Carrier Bureau.

Our presentation focused on these points:

- The ISP/C is the largest trade association for small to mid-size ISPs and other members of the Internet services industry, and now includes about 285 company members. ISP/C members have well over 1 million subscribers in the aggregate, with headquarters in more than 42 U.S. states and 10 countries.

- Many ISP/C members operate in rural and small-market areas that lack CLEC activity now and for the foreseeable future.

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- Most ILECs, including all of the RBOCs and GTE, operate their own ISP services. The independent ISPs compete with the ILECs, and simultaneously are dependent on the ILECs for facilities. The ILECs thus have both the means and the incentive to discriminate against the independent ISPs.

- The independent ISP community can provide detailed accounts of RBOC and GTE behavior that an impartial observer would have to describe as intentional discrimination. Many of those instances are violations of Computer III.

- The independent ISPs lack an effective enforcement mechanism against unlawful discrimination by the RBOCs and GTE. The new Section 208 rules make the formal complaint process too cumbersome and expensive for typical carrier violations against small and mid-size ISPs. The ISPs have not generally been successful in obtaining relief through the informal complaint process.

- At the meeting. the ISP/C proposed three enforcement mechanisms to support those presently in place.

  First: The Common Carrier Bureau should add an area to its Internet web page in which an ISP can electronically lodge copies of protests sent to the local RBOC or GTE. The web page would automatically assign a case number, and the RBOC or GTE would be encouraged to post a copy of its reply, if any, under the same case number. The ISP could continue the exchange if necessary. Knowing that the Commission has been informed of the dispute might help motivate the carrier to resolve it. The Commission or private parties can tabulate the incidence of allegations. And the accumulated data may narrow the issues for a Section 208 complaint.

  Second: Some violations are directed against the independent ISP community as a whole, rather than individual ISPs, and can be established from facts available to the public, not just facts within the knowledge of a particular ISP. For example, some ILECs openly market their ISP service bundled unlawfully with telecommunications service. It is unfair to expect one ISP to bear the burden of prosecuting a complaint, under these circumstances. Any one ISP should be able to draw such a violation to the Commission's attention and request enforcement action.

Third: RBOC and GTE field personnel often seem unaware of non-discrimination obligations that their Washington lawyers would doubtless agree are required. To help alleviate these problems, ISP/C asks the Commission to impose modest reporting requirements on the RBOCs and GTE on the training of sales and technical staff to deal with customers so as to avoid both preferential references to the company's own ISP and disparagement of competing ISPs.

If there are any questions about this filing, please call me directly at the number above.

Respectfully submitted,

Mitchell Lazarus

cc: Carol Mattey, FCC (By Hand)
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