

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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| In the Matter Of                         | ) |                     |
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| Implementation of the Local Competition  | ) | CC Docket No. 96-98 |
| Provisions in the Telecommunications Act | ) |                     |
| of 1996                                  | ) |                     |
|  | ) |                     |
|  | ) |                     |
| Inter-Carrier Compensation               | ) | CC Docket No. 99-68 |
| For ISP-Bound Traffic                    | ) |                     |

Comments of John Staurulakis, Inc.

John Staurulakis, Inc. (JSI), hereby files comments in response to the Federal Communications Commission's (Commission's) *Notice of Proposed Rulemaking* (NPRM) regarding Inter-Carrier Compensation for ISP-Bound Traffic.<sup>1</sup> JSI is a consulting firm specializing in financial, regulatory and management services to approximately two hundred Incumbent Local Exchange Carriers (ILECs) throughout the United States. JSI assists these ILECs in the preparation and submission of jurisdictional cost studies and Universal Service Fund (USF) data to the National Exchange Carrier

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<sup>1</sup> *Notice of Proposed Rulemaking*, Federal Communications Commission, CC Docket No. 99-68, February 26, 1999.

Association (NECA), and routinely prepares and files tariffs with the Commission on behalf of a number of these ILECs. In that the proposals and questions raised in the NPRM will affect the operations of its client companies, JSI is an interested party in this proceeding.

In the NPRM, the Commission requested comments on a variety of issues related to the establishment of procedures for compensation related to traffic terminated to an ISP server within the local calling scope of a local exchange carrier—herein referred to as “dial-up ISP traffic.” In fact, the Commission has labeled this form of compensation “inter-carrier compensation” to differentiate it from “reciprocal compensation,” that is by definition identified as the compensation related to the transport and termination of local traffic. JSI finds that it is appropriate for the Commission to make this distinction because of its ruling declaring that dial-up ISP traffic is mostly, or largely, interstate in nature and should be governed accordingly.<sup>2</sup>

#### States Should Oversee Inter-carrier Compensation Arrangements

JSI agrees with the Commission’s tentative conclusion that determining inter-carrier compensation should be addressed according to the established parameters identified in the Communications Act of 1934, as amended.<sup>3</sup> In the alternative, the Commission suggested the adoption of federal rules governing inter-carrier compensation and resolution of disputes by authorities of the Commission. JSI recommends that the Commission authorize state commissions to mediate and arbitrate inter-carrier

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<sup>2</sup> *Declaratory Ruling*, Federal Communications Commission, CC Docket No. 96-98, February 26, 1999 (Declaratory Ruling).

<sup>3</sup> 47 U.S.C. §§ 251-252.

compensation either under §§251-252 of the Act or under its own rules for resolving inter-carrier compensation issues. State commissions are already routinely involved in interconnection arrangements between carriers. The proposal is a natural extension of their authority governing such arrangements.

### Measurement and Jurisdictional Separations

The Commission requested comment on the possibility of segregating intrastate and interstate ISP-bound traffic. JSI believes that there are two issues that merit comment: the measurement of ISP-bound traffic and the jurisdictional separation of such traffic.

### Measurement

JSI has experience in identifying dial-up ISP traffic and acknowledges that the process of measurement is difficult. The difficulty is acute regardless of whether the ISP is served by the ILEC or is in a neighboring ILEC's exchange that is within the local calling scope of the originating exchange.<sup>4</sup> The fundamental problem with the measurement of this traffic is that most independent telephone companies offer local exchange service to their customers on a flat-rate basis, and do not measure local usage—of which the dial-up ISP traffic is a component. A secondary issue in an ILEC's ability to measure this traffic is the required on-going knowledge of all ISP telephone numbers that can be accessed within an ILEC's local calling areas.

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<sup>4</sup> These expanded area service plans can take a variety of forms. The essential characteristic of all of these plans is the ability to dial outside an ILEC service area using local dialing protocols. Many EAS plans are priced as flat-rate and largely serve a public interest in linking local communities of interest.

JSI's experience has been that these difficulties can be overcome by a combination of switch translation changes and measurement devices. However, admittedly, the accuracy of these procedures is dependent upon the on-going knowledge of all ISP telephone numbers.

In summary, the measurement of traffic bound to an ISP can be performed by ILECs if the traffic analyst can identify the ISPs' phone numbers and measure traffic directed to these specific phone numbers. The FCC may consider requiring that all ILECs be required to identify telephone numbers used for dial-up ISP service.

#### Jurisdictional Separation

The Commission also seeks comment on the ability to segregate interstate and intrastate ISP-bound traffic. JSI agrees with comments referred to in the Declaratory Ruling that the separation of interstate and intrastate ISP-bound traffic is not currently possible.<sup>5</sup> Furthermore, JSI posits that such a jurisdictional separation is not necessary and that the Commission should not consider adopting rules to jurisdictionally separate this traffic.

The Commission is authorized to preempt state regulation using the inseparability doctrine.<sup>6</sup> The Commission has invoked this doctrine in a recent ISP case, for which it was not possible to separate the interstate and intrastate components.<sup>7</sup> Similar treatment from the Commission is required with dial-up ISP-bound traffic. Using the

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<sup>5</sup> Declaratory Ruling, ¶19.

<sup>6</sup> *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 375 n.4 (1986).

<sup>7</sup> *Memorandum Opinion and Order*, Federal Communications Commission, CC Docket No. 98-79, October 30, 1998 (GTE ADSL Service Order).

Commission's end-point definition of an "ISP call", it is not technically feasible for the ILEC to identify the interstate and intrastate portions of a dial-up Internet session. However, given the ubiquity of Internet termination sites, the assumption that more than 10 percent of the traffic terminates at interstate sites is reasonable and may in fact be axiomatic.<sup>8</sup> Until such time that this traffic can be efficiently identified, dial-up ISP-bound traffic should remain governed as interstate traffic.

JSI notes that while the Commission has identified dial-up ISP-bound traffic as interstate in nature, it has granted regulatory forbearance on the connections associated with dial-up ISP-bound traffic. Consequently, the connections, *e.g.*, basic local exchange connections, ordered by the ISP for use in providing dial-up ISP services [shall] be accounted for as intrastate. JSI claims that this forbearance does not extend to the establishment of traffic factors for use in the separations process. If the Commission desired otherwise, it would have declared such.<sup>9</sup> Consequently, JSI responds to the Commission by declaring that separating dial-up ISP-bound traffic is not feasible nor is it necessary at present – all of dial-up ISP-bound traffic [shall] be identified as interstate on a prospective basis for Part 36 purposes.

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<sup>8</sup> The 10 percent threshold has been identified by the Commission in *MTS and WATS Market Structure, Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, 4 FCC Rcd 5660 (1989).

<sup>9</sup> The Commission had the opportunity to forbear on Internet traffic for traffic separation purposes in the Declaratory Ruling. In ¶23, footnote 76, the Commission notes that SBC is planning to allocate 100 percent of dial-up ISP-bound traffic to the interstate jurisdiction. The Commission failed to declare that this procedure is inconsistent with its Ruling and, thus established a precedent regarding the proper treatment of traffic for separation purposes.

Respectfully submitted,

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